

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 31 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

PRUDENTIAL PROPERTY AND )  
CASUALTY INSURANCE COMPANY, )

Plaintiff, )

vs. )

No. 88-C-1434B

LARRY H. BARNETT and )  
JACKIE LeROY BUCKLEY, )

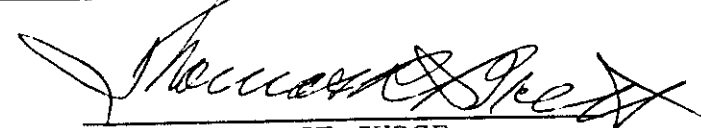
Defendants.)

JUDGMENT

Upon the motion of Plaintiff and entry of default having been made as to Defendants Larry H. Barnett and Jackie LeRoy Buckley, neither of them having filed any answer or other responsive pleading to Plaintiff's complaint as required by law, the Court thereupon determines that the allegations of the complaint are confessed as against Defendants and said allegations are true and correct.

Judgment is therefore entered for Plaintiff for declaratory relief in accordance with the complaint and specifically that the home owners insurance policy number 556H261760 issued by Plaintiff to Defendant Barnett is inapplicable to all consequences of that certain incident of March 24, 1988, which gave rise to State Court Case Number C-88-324, District Court, Creek County, Oklahoma, Sapulpa Division, and Plaintiff is neither obligated to defend Barnett in regard thereto, nor to indemnify Barnett against any damages which may be awarded to Buckley against Barnett.

Dated the 31 day of Jan, 1989.

  
U.S. DISTRICT JUDGE

FILED

88-C-313<sup>v</sup>-B

**JAN 31 1989**  
**Jack C. Silver, Clerk**  
**U. S. DISTRICT COURT**

For this Court to determine whether Wheeler knew what rights he was waiving by pleading guilty, the transcript of proceedings would ordinarily be the best evidence to review. However,

Respondents point out that the transcript is not available. Respondents submit a notarized letter of Oklahoma County Court Administrator, Robert Martin. Martin's letter advises that no transcript was ever prepared, any untranscribed records have been destroyed, and the court reporter has retired. (See, Respondent's Second Supplemental Response.)

Where a transcript is unavailable, the Court must look to testimonial evidence from the participants in the guilty plea proceedings: the trial judge, defense counsel, state's attorney and Defendant himself. Respondents, however, point out that during the intervening years the trial judge has passed away<sup>1</sup>, defense counsel has lost specific recollection of events<sup>2</sup>, and, state's attorney has moved to Alaska.<sup>3</sup>

Thus, it appears only Petitioner would be able to testify with any specific recollection of events as to the events on September 18, 1972. Without having the benefit of a transcript, Respondent is clearly in a much weaker position to contest Petitioner's claims. The prejudice Respondent would suffer is clearly a direct result of the sixteen (16) year delay.

Rule 9(a) provides:

(2) **Delayed petitions.** A petition may be dismissed if it appears that the state of which the respondent is an officer has been prejudiced in its ability to respond

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<sup>1</sup> Letter of Robert Martin, Court Administrator.

<sup>2</sup> Affidavit of H.C. Cooper, States Exhibit 1.

<sup>3</sup> Counsel for Respondent's advised the Magistrate she was unable to contact the former prosecutor concerning his recollection of the plea hearing.

to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

Respondents have thus met their burden (Bowen v. Murphy, 698 F.2d 381 (10th Cir. 1983)) and the burden shifts to Petitioner.

Petitioner attempts to fall under the exception by arguing that he and his sister (Darlene Klipper) diligently sought a copy of the plea transcript in the years 1975 and 1976, and since 1985, but without success.<sup>4</sup>

Petitioner misses the essence of his Rule 9(a) burden in making his argument. Once the State has shown it will be prejudiced in responding to a habeas petition, Petitioner must demonstrate that the grounds he now sets forth for habeas relief (not the evidence to support the grounds) were not known to him prior to the trial judge's death, or the defense counsel's loss of memory, or the state attorney's move to Alaska, or the destruction of the court reporter's notes. To this end, for example, Petitioner would have known, since 1972, whether he voluntarily entered his plea, or whether he was coerced. Based on his affidavit, it appears that Petitioner knew there were grounds for attacking the conviction as early as 1972, or at

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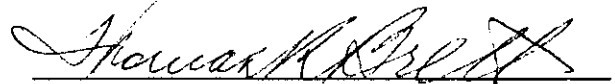
<sup>4</sup> Affidavits of Robert Wilson Wheeler and Darlene Klipper, Petitioner's "Motion to Expand the Record".

least as early as the mid-1970's when he began his attempts to obtain a transcript.<sup>5</sup>

In sum, Petitioner has failed to show why he waited sixteen (16) years to present these grounds to a federal habeas court, or whether the delay would have been inevitable for one exercising reasonable diligence. Because Petitioner has failed to meet his burden after Respondents demonstrated real prejudice from the delay, the Petitioner must be dismissed under Rule 9(a) of the Rules Governing §2254 Cases. Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979).

Therefore, it is ORDERED, that the Petition for Writ of Habeas Corpus be dismissed with prejudice.

So ORDERED this 31 day of January, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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<sup>5</sup> In Cotton v. Mabry, 674 F.2d 701, 704 (8th Cir. 1980), a case similar to this one, a habeas petition was dismissed under Rule 9(a) after a ten (10) year delay in challenging a guilty plea. Although the petitioner attributed some of the delay to an unavailable transcript, the court found the delay unreasonable, as the petitioner was aware of the facts upon which he relied to challenge his guilty plea at or immediately after his trial, long before he brought the habeas action.

The case at bar is not one wherein a recent change of controlling law is alleged as justification for delay. E.g., Myers v. Washington, 646 F.2d 355 (9th Cir. 1981). Rather, it appears that most of the delay is attributable to Petitioner's parole in 1978, for it was not until after parole was revoked in 1985, that he began again the search for a transcript and filed this action. Affidavit of Robert Wilson Wheeler, Exhibit to "Motion to Expand the Record".

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILE

BOOKER T. X. SHEPHARD, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RITA ANDREWS, et al, )  
 )  
Defendants. )

88-C-470-B

JAN 31 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

Now before the court are plaintiff's Motion for a Preliminary Injunction (Docket #11)<sup>1</sup> and Motion for Stay Pending Disposition of Motion for Preliminary Injunction and Supporting Brief after Judgment (#14). Upon examination of the Motion for a Preliminary Injunction and defendants' Response, the court finds that the motion should be and hereby is denied. The purpose of a preliminary injunction is to prevent irreparable harm to one party to a claim pending its disposition on the merits. Plaintiff's motion was filed one day after final disposition of his claim on December 13, 1988 and is therefore an inappropriate request for relief. Injunctive relief is therefore denied.

Plaintiff's Motion for Stay Pending Disposition of Motion for Preliminary Injunction is being construed by the court as a timely filed Motion to Alter or Amend Judgment pursuant to Rule 59(e), Federal Rules of Civil Procedure. See 6A Moore's Fed.

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<sup>1</sup> "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

Practice ¶59.12[1]. Regardless of how styled, a motion questioning the correctness of a judgment timely made within ten days thereof will be treated under Rule 59(e). Dalton v. First Interstate Bank of Denver, \_\_\_ F.2d \_\_\_, 1988 WL 136532 (10th Cir. 1988); Skagerberg v. Oklahoma, 797 F.2d 881, 883 (10th Cir. 1986); Venable v. Haislip, 721 F.2d 297, 299 (10th Cir. 1983).

It appears from his motion that plaintiff at the same time seeks to amend his complaint to reflect a deletion of the damage request of \$50,000.00 and the substitution of an injunction restraining prison officials from punishing him for refusing to shave his beard for religious reasons and a reinstatement of his good time credits lost because of his repeated violations of the prison's grooming policy. The Supreme Court in Foman v. Davis, 371 U.S. 178 (1962), held that a Rule 59(e) motion may be used as a vehicle in which to vacate a judgment to allow amendment of the complaint. Id. at 182. In Foman, the plaintiff's action was dismissed for failure to state a claim in that her claim was barred by the statute of frauds. Id. at 179. The plaintiff asserted that she was entitled to recover under the theory of quantum meruit and moved to vacate the dismissal and amend her complaint accordingly. Id. Here, as in Foman, the plaintiff seeks to state an alternative theory of recovery.

Rule 15(a) of the Federal Rules of Civil Procedure governs the parameters of proper amendment. On considering post-dismissal amendments, the Supreme Court explained:

In the absence of any apparent or declared reason -- such as undue delay, bad faith, or

dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be 'freely given.' Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

Foman, supra, at 182 (emphasis added).

While this court ordinarily would be predisposed to grant such an amendment in the interest of justice, it finds in this case that the requested relief sought requires an identical examination of the issues and merits of the claim as has already been undertaken and which resulted in the dismissal order. Consequently, the court finds that allowing the proposed amendment would be a futile exercise, as the plaintiff's claim gains no additional support in convincing the court of his free exercise infringement by merely requesting a different form of relief. In either case, an actual violation of rights must be alleged. Where an amendment would not affect the outcome of the case, a court is acting within its discretion to refuse to allow it. United States Labor Party v. Oremus, 619 F.2d 683, 692 (7th Cir. 1980).

The court has taken a fresh look at the plaintiff's claims pursuant to the Rule 59(e) motion and additional authority provided by the plaintiff in the brief accompanying his post-dismissal Motion for Preliminary Injunction. Upon reexamination



of the pleadings and applicable law, the court finds that the dismissal is and was proper and therefore is not to be altered or amended.

The cases cited by plaintiff do not apply to the facts here. The most recent standard of review for prison regulations which allegedly inhibit an inmate's exercise of constitutional rights was set out in O'Lone v. Estate of Shabazz, 482 U.S. 342, 107 S.Ct. 2400, 96 L.Ed.2d 282, 289 (1987). The Supreme Court emphasized that the regulations of prison administration and the judgment of prison officials are entitled to respect and deference on "difficult and sensitive matters of institutional administration". Id. at 293, quoting Block v. Rutherford, 468 U.S. 576, 588 (1984). Consequently, the standard of review was less restrictive than ordinarily applied to infringements occurring outside prison walls: "prison regulations alleged to infringe constitutional rights are judged under a 'reasonableness' standard." Id. at 290. The regulation must be "reasonably related to legitimate penological interests". O'Lone, 96 L.Ed.2d at 290, quoting Turner v. Safley, 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64, 79 (1987). Therefore, no burden was placed upon prison officials to show that no less restrictive means exist to accomplish the same objective. O'Lone, 96 L.Ed.2d at 290.

"[A] regulation must have a logical connection to legitimate governmental interests invoked to justify it." Id. at 291, citing Turner, supra. The prison officials in plaintiff's case

have asserted that the Inmate Grooming Code, CCC-070309-01, contributes to the maintenance of "sanitary conditions of the living quarters and the health, safety, and welfare of the inmates". Clearly, a legitimate governmental interest is involved. The court finds that requiring the shaving of beards, the challenged portion of the regulation, advances this goal. It is relevant to note that the plaintiff does not complain of and is not deprived of "alternative means of exercising the right" to practice his religious beliefs. O'Lone, supra at 291. Plaintiff has provided the court in his brief supporting his Motion for Preliminary Injunction with lists of such means of practicing his beliefs and the names of religious leaders allegedly advocating such practices.<sup>2</sup>

Regulation CCC-070309-02 further provides an exemption from the mandatory shaving policy for religious and medical reasons. An inmate must, however, apply for the exemption. If an exemption is denied, an appeal procedure is provided.<sup>3</sup> Plaintiff refused to file for such exemption until he had accumulated several misconduct reports and been disciplined, notwithstanding suggestions that he do so. Then, once application had been made and denied, he failed to appeal. In light of these

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<sup>2</sup> Such practices as alleged by petitioner include "clip mustache, do miswark [sic], put water in nose and inhale upward to clean nose, have nails cut, wash hands properly, remove hair from armpits, remove hair from private parts, and do istanja [sic], i.e. wash private parts with water after passing urine or stools".

<sup>3</sup> This accomodation of religious exercise appears to exceed the requirement of the O'Lone decision.

circumstances, plaintiff has no grounds upon which to rest a claim that the application of prison regulations violated his rights.

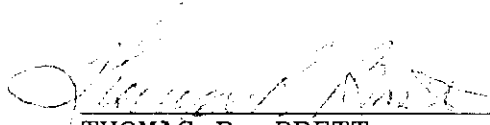
The court finds that plaintiff has provided no additional information in his brief in support of his Motion to Stay that shows a violation of his constitutional right to exercise his religion, because the regulations pertaining to grooming, and in particular to facial hair, are justified by concerns for the sanitary conditions of the prison and the health and welfare of prisoners, plaintiff has the opportunity to observe his religion in other ways, and accommodation of the right he asserts would have adverse effects on sanitation and health conditions at the prison.

The court reiterates that in its Order of December 13, 1988 it found that plaintiff had shown no violation of his liberty right that occurred when he was placed in restrictive housing for failure to comply with the grooming guidelines. The Oklahoma prison officials have broad authority over the institutions they manage and may segregate prisoners, transfer them, and assign them a custodial status to protect them and other inmates. The officials can prescribe rules for the demeanor of prisoners and the punishment of recalcitrant prisoners.

In order to establish a cause of action under §1983, a plaintiff must allege that defendants deprived him of a federally protected right and that the persons depriving him of that right acted under color of state law. Gomez v. Toledo, 446

U.S. 635 (1980). The court finds that the plaintiff has alleged no violation of his constitutional rights. Plaintiff's Motion for Stay Pending Disposition of Motion for Preliminary Injunction, construed by the court as a timely filed Motion to Alter or Amend Judgment pursuant to Rule 59(e), Federal Rules of Civil Procedure, is therefore denied and the dismissal of this case is affirmed.

Dated this 31<sup>st</sup> day of January, 1989.

  
\_\_\_\_\_  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MID-AMERICA DAIRYMEN, INC.  
a Kansas Corporation,

Plaintiff,

vs.

JIM L. TREAT, an individual,  
and MARVIN L. MORSE, an  
individual,

Defendant.

No. 88-C-449-B

FILED

JAN 31 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER AND JUDGMENT

This matter comes before the Court upon Plaintiff Mid-America Dairymen Inc.'s Application for Attorney's Fees. Plaintiff initiated this action to collect on personal guaranties executed by Jim L. Treat and Marvin L. Morse. On December 21, 1988, this Court entered summary judgment against the Defendants in the amount of \$67,500.

Oklahoma law allows attorney's fees to be awarded to a prevailing party in limited circumstances.

"In any civil action to recover on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, or for labor or services, unless otherwise provided by law or the contract which is the subject of the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs."

12 Okl.Stat.Ann. §936. As this is a suit to collect on the guaranties of a negotiable instrument, the statute is controlling. National Educators Life Ins. Co. v. Apache Lanes, Inc., 555 P.2d

600 (Okla. 1976).

Plaintiff has timely filed an Application for Attorney's Fees for \$3,046.00 and costs in the amount of \$258.82.<sup>1</sup> Upon consideration of the work expended and the nature of this case, the Court finds attorney's fees in the amount of \$3,046.00 should be awarded to the Plaintiff and taxed as costs to the Defendants.

IT IS SO ORDERED, this 31<sup>ST</sup> day of January, 1989.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>Costs of this action, excluding attorney's fees, were taxed on January 17, 1989.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BERTRAM-TROJAN, INC.,

Plaintiff,

vs.

PORT CARLOS

D

*Close*

No. 85-C-138-E

ORDER

**FILED**  
JAN 30 1989  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

This matter comes before the Court upon the Order and Judgment of the United States Court of Appeals for the Tenth Circuit filed July 29, 1988 affirming this Court's judgment in favor of Plaintiff, Bertram Yacht, and against Defendant, Port Carlos, Inc., in the amount of \$24,809.72, and ordering that this Court vacate both the judgment in favor of Port Carlos for \$10,000.00, and this Court's award of attorney fees to either party.

Also at issue for consideration is the motion of Port Carlos for relief from judgment in which it asks the Court to reduce the pre-judgment interest rate from 15% per annum to 10% per annum. As grounds for the relief requested Port Carlos urges that the legal rate of interest allowed by the State of Oklahoma for pre-judgment interest is 10% per annum, not 15% per annum. The court notes that on the date judgment in this case was rendered, the legal rate of interest allowed by Oklahoma for pre-judgment interest was 15% per annum. 12 O.S.(1985) Supp. §727.

The legal rate of pre-judgment interest being correct at the

time judgment was rendered in favor of Bertram, and that judgment being affirmed, the Court declines to reduce the annual percentage rate from 15% to 10%. Port Carlos' motion is accordingly denied.

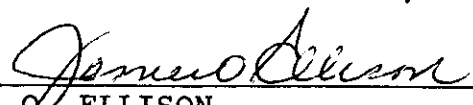
IT IS THEREFORE ORDERED that the judgment of May 15, 1986 in favor of Port Carlos, Inc. and against Bertram Yacht in the amount of \$10,000.00 is vacated;

IT IS FURTHER ORDERED that the award of costs and attorney fees to Bertram Yacht in the amount of \$15,838.55 is vacated;

IT IS FURTHER ORDERED that the award of attorney fees to Port Carlos, Inc. in the amount of \$1,580.68 is vacated; and

IT IS FURTHER ORDERED that the motion of Port Carlos, Inc. for relief from judgment is denied.

ORDERED this 23<sup>d</sup> day of January, 1989.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**  
JAN 30 1989  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its corporate  
capacity, as successor in  
interest to Century Bank, an  
Oklahoma banking corporation

Plaintiff,

vs.

INVIVO RESEARCH LABORATORIES,  
INC., CARL L. SHORE AND CLYDE  
L. DUNAVENT,

Defendants.

Case No. 88-C-468-B

JOURNAL ENTRY OF JUDGMENT

This cause coming on for hearing this 30<sup>th</sup> day of  
January, 1989, before the undersigned Judge, the parties  
being represented by their counsel of record, and it appearing to  
the Court that this a suit to recover judgment on a promissory  
note;

It further appearing that due and legal service is properly  
had on all defendants;

The Court finds as follows:

1. This action was originally filed in the District Court  
of Tulsa County, State of Oklahoma, by Century Bank (the "Bank")  
for recovery of monies owed it under a promissory note executed  
by Defendants Invivo Research Laboratories, Inc. ("IRL"), and

Carl Shore ("Shore"). IRL and Shore admitted execution of the note and receipt of the proceeds, but asserted waiver, estoppel and fraud in the inducement as affirmative defenses.

2. On March 24, 1988, the Oklahoma State Banking Commissioner ("Commissioner") issued Order No. 88-R-12 and closed the Bank. Federal Deposit Insurance Corporation accepted appointment as liquidating agent (in such capacity, the "Liquidating Agent") pursuant to Okla. Stat., Tit. 6, §1205 and 12 U.S.C. 1821(e). Subsequently, Federal Deposit Insurance Corporation, in its corporate capacity ("FDIC") purchased certain assets from the Liquidating Agent pursuant to 12 U.S.C. 1823(c)(2)(A). Among the assets purchased by FDIC are the assets involved in this action.

3. On May 26, 1988, FDIC filed a Petition for Removal with this Court. On June 22, 1988, this Court entered an Order substituting FDIC as the real party in interest, in place of Century Bank. The Court also stayed the action until September 24, 1988, pursuant to Okla. Stat., Tit. 6, §1202(b)(3).

4. IRL is an Oklahoma corporation.

5. IRL and Shore were general partners in Forest Trails South, an Oklahoma partnership, at all times relevant hereto.

6. On or about March 15, 1985, IRL and Shore made and delivered to the Bank promissory note No. 26764, which was renewed by note No. 26764/1, with a maturity date of March 15, 1986 (the "Note").

7. In executing the Note, for good and valuable consideration, Defendants IRL and Shore agreed and bound themselves to pay to the order of the Bank the sum of \$115,000.00, plus interest at the rate of the Bank's prime plus 1.5% at all times from March 15, 1985, until paid.

8. The Defendants failed to make the payments required under the Note.

9. FDIC has succeeded to all the Bank's right, title and interest in the Note.

10. Upon default under the Note, FDIC is entitled to recover a reasonable attorney's fee.

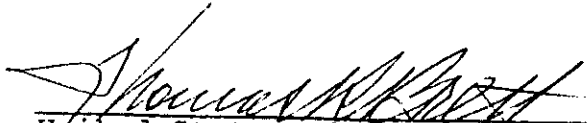
11. As of the 11th day of January, 1989, the total principal sum due on the Note is \$115,000.00. The total aggregate interest due on the Note as of the same date is \$62,019.42. Interest continues to accrue at the rate of \$59.09 per diem.

12. The Court has determined pursuant to its Order entered on the 23rd day of December, 1988, that there is no material question of fact to prevent summary judgment, for the reason that the defense has presented by Defendants IRL and Shore are barred as a matter of law.

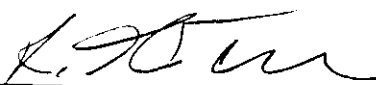
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

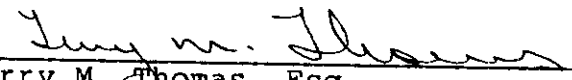
FDIC is granted judgment against Defendants Invivo Research Laboratories, Inc. and Carl Shore in the principal sum of \$115,000.00, together with accrued interest of \$62,019.42 as of January 11, 1989, interest accruing thereafter at the rate of \$59.09 per diem until the date of judgment, a reasonable

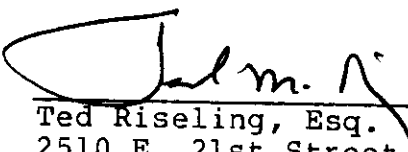
attorneys' fee in the amount of \$11,500.00, the cost of this action, and interest on the total sum from the date of judgment at the statutory rate.

  
United States District Court Judge

Approved as to Form:

  
R. David Whitaker, OBA No. 10520  
of BOESCHE, McDERMOTT & ESKRIDGE  
800 ONEOK Plaza  
100 West Fifth Street  
Tulsa, Oklahoma 74103  
(918) 583-1777  
ATTORNEYS FOR FEDERAL DEPOSIT  
INSURANCE CORPORATION

  
Terry M. Thomas, Esq.  
Norman, Wohlgemuth & Thompson  
909 Kennedy Building  
Tulsa, OK 74103  
ATTORNEYS FOR DEFENDANT  
INVIVO RESEARCH LABORATORIES, INC.

  
Ted Riseling, Esq.  
2510 E. 21st Street  
Tulsa, OK 74114  
ATTORNEY FOR DEFENDANT CARL SHORE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

**JAN 30 1989**

ROBERT B. TYLER, II and )  
HESTER W. TYLER, )

Plaintiffs/ )  
Judgment Creditors )

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

vs. )

Case No. 87-C-708-C

CIGNA INSURANCE COMPANY, )  
and HOME OWNERS WARRANTY )  
CORPORATION, )

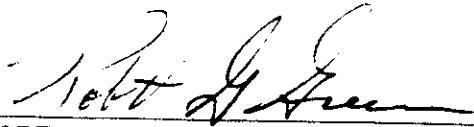
Defendants.)

**RELEASE AND SATISFACTION OF JUDGMENT  
AND STIPULATED DISMISSAL WITH PREJUDICE**

The Plaintiffs, Robert B. Tyler, II and Hester W. Tyler ("Judgment Creditors"), both individually and by counsel, hereby dismiss the above-styled and numbered cause with prejudice pursuant to Rule 41(a)(1) Fed.R.Civ.P. as against the Defendants, CIGNA Insurance Company and Home Owners Warranty Corporation. The Judgment Creditors further acknowledge receipt of payment in full of, and they hereby release, the Judgment amount of \$70,000.00 entered by general jury verdict in this matter on September 23, 1988. The Judgment Creditors also acknowledge receipt of an additional sum in an amount mutually agreed upon by the parties as payment in full for attorney's fees, costs, and pre- and post-judgment interest. The Judgment Creditors further hereby order, authorize and direct the Clerk of this Court to

file this Release and Satisfaction of Judgment and Stipulated Dismissal With Prejudice. The Judgment and all other obligations of the Defendants are released in full.

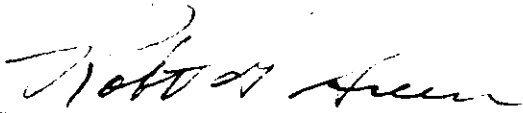
DATED this 30 day of January, 1989.

  
ROBERT G. GREEN, OBA # 3753  
Suite 200  
16 East 16th Street  
Tulsa, Oklahoma 74119  
(918) 592-5592

ATTORNEY FOR JUDGMENT CREDITORS,  
ROBERT B. TYLER, II AND  
HESTER W. TYLER

**CERTIFICATE OF MAILING**

THIS IS TO CERTIFY that I have this 30 day of Jan., 1989, served a copy of the above and foregoing Release and Satisfaction of Judgment and Stipulated Dismissal With Prejudice upon Anthony P. Sutton, Esq., Feldman, Hall, Franden, Woodard & Farris, 525 S. Main, Suite 1400, Tulsa, OK 74103-4409, by placing same in the U. S. Mail, first-class postage prepaid.

  
Robert G. Green

1/tyler.dis

VESTAL JOHNSON, ET AL,  
Plaintiff,  
v.  
N.J. GAINES, SR., ET AL,  
Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

**FILED**

**JAN 30 1989**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STARBRIGHT OIL & GAS, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 88-C-320-B
	)	
SOUTHERN STAR ENERGY,	)	
	)	
Defendant.	)	

**ORDER OF DISMISSAL**

This matter comes before the Court this 12th day of January, 1989, upon Defendant's Motion to Dismiss the Complaint pursuant to Fed.R.Civ.P. 41(b) for want of prosecution on the part of Plaintiff. The Plaintiff being represented by John Price, attorney at law, and Defendant being represented by C. Raymond Patton, Jr., attorney at law, the Court having considered the record, having heard the statements of counsel, and being fully informed of the nature and status of the case finds as follows:

Plaintiff's Complaint was filed April 7, 1988, as an action for the breach of a written contract. Although defense counsel had requested a copy of the executed written contract alleged by the Plaintiff, Plaintiff's counsel has been unable to deliver an executed copy of the contract to the Defendant and has represented to the Court on this date that a diligent search on his part has revealed that none exists. Moreover, pursuant to the order of the Court on the 19th day of July, 1988, Plaintiff and Defendant were



required to exchange the names and addresses of all witnesses to the other party by October 7, 1988. Plaintiff failed to provide a list of witnesses to the Defendant until December 12, 1988, four days before scheduled Pretrial Conference in this matter. Now, therefore, it is hereby ordered by the Court as follows:

1. Defendant's Motion to Dismiss Plaintiff's Complaint is hereby granted for the reason set forth above. The dismissal of Plaintiff's Complaint shall be with prejudice.

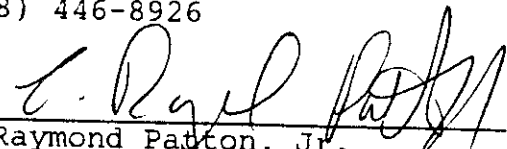
2. Concurrently with the granting of Defendant's Motion to Dismiss, defense counsel has requested that the Court allow Defendant's counterclaim to be dismissed as well and is therefore so ordered.

S/ THOMAS R. BRETT

THOMAS R. BRETT, JUDGE  
UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:

John Price  
Attorney for Plaintiff  
4993 S. Union Avenue  
Tulsa, Oklahoma 74107  
(918) 446-8926

  
C. Raymond Patton, Jr.  
Attorney for Defendant  
320 S. Boston, Suite 700  
Tulsa, Oklahoma 74103  
(918) 583-2131

A:64290129.ORD  
CRP:0-Z

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FREDA D. ARCHER,  
Plaintiff,

vs.

OTIS R. BOWEN, M.D.  
Secretary of Health and  
Human Services,

Defendant.

**FILED**

*J* JAN 30 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 88-C-1365-B

AGREED JUDGMENT

This matter comes on for consideration this 30<sup>th</sup> day  
of January, 1989, the Plaintiff, Freda D. Archer,  
appearing by Carl D. Hall, Jr., of Nichols, Wolfe, Stamper, Nally  
and Fallis, Inc., and the Defendant, Otis R. Bowen, M.D.,  
Secretary of Health and Human Services, appearing by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney.

The Court, being fully advised and having examined the  
court file, finds as follows:

1. This is an action by Plaintiff appealing the  
Secretary of Health and Human Service's decision holding that the  
Secretary is entitled to recovery of a wage earner overpayment of  
\$20,488.30 and claimant overpayment in the amount of \$1,845.00.

2. The parties agree that Plaintiff, Freda D. Archer,  
is personally liable only for the claimant overpayment but not  
the wage earner overpayment.

3. Plaintiff, Freda D. Archer, represents that there is not now nor has there ever been an estate in existence consisting of any assets of her deceased husband, Tommy J. Archer, and the Secretary of Health and Human Services agrees to this judgment in reliance upon said representation.

4. The parties agree that should any individual ever become eligible to receive any social security benefits based upon the wage earner Tommy J. Archer's earnings the Social Security Administration shall be entitled to and will withhold those benefits until the wage earner overpayment in the amount of \$20,488.30 is recovered in full.

5. Plaintiff, Freda D. Archer, agrees that she is indebted to the Secretary of Health and Human Services in the amount of \$1,845.00 constituting claimant overpayment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the United States of America acting on behalf of Otis R. Bowen, M.D., Secretary of Health and Human Services, have and recover judgment against the Plaintiff, Freda D. Archer, in the amount of \$1,845.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff may pay the judgment amount in installments as agreed upon between the parties; provided, however, that if Plaintiff should fail to make a timely payment, as agreed, and fails to remedy the default within ten (10) days after the due date, the entire unpaid principal and interest shall immediately become due and payable in its entirety and the balance remaining unpaid on the date of the default shall henceforth be subject to interest at the rate of nine (9) percent per annum until the entire indebtedness consisting of principal and interest shall be paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant agrees to this judgment in reliance upon Plaintiff's representation that there is not now and never has been an estate consisting of any assets of her deceased husband Tommy J. Archer; and the Court specifically authorizes the Defendant to recover any wage earner overpayment from any assets belonging to Tommy J. Archer if the existence of an estate consisting of any assets is ever discovered.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that should any individual become eligible to receive any social security benefits based on the wage earner Tommy J. Archer's earnings the Social Security Administration shall be entitled to withhold those benefits until the wage earner overpayment is recovered in full.

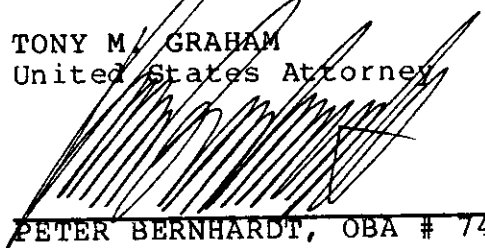
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff, Freda D. Archer, shall not have any personal liability for any of the wage earner overpayment and that her sole liability shall be for the claimant overpayment as set forth herein.

  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

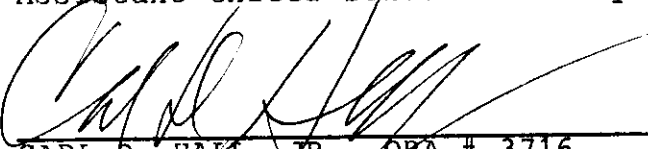
OTIS R. BOWEN, M.D.  
Secretary of Health and Human Services

TONY M. GRAHAM  
United States Attorney



---

PETER BERNHARDT, OBA # 741  
Assistant United States Attorney



---

CARL D. HALL, JR., OBA # 3716  
Attorney for Freda D. Archer



---

FREDA D. ARCHER  
Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JAN 30 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its corporate  
capacity, as successor in  
interest to Century Bank, an  
Oklahoma banking corporation

Plaintiff,

vs.

INVIVO RESEARCH LABORATORIES,  
INC., CARL L. SHORE AND CLYDE  
L. DUNAVENT,

Defendants.

Case No. 88-C-468-B

JOURNAL ENTRY OF JUDGMENT

This cause coming on for hearing this 30<sup>th</sup> day of  
January, 1989, before the undersigned Judge, the parties  
being represented by their counsel of record, and it appearing to  
the Court that this a suit to recover judgment on a promissory  
note;

It further appearing that due and legal service is properly  
had on all defendants;

The Court finds as follows:

1. This action was originally filed in the District Court  
of Tulsa County, State of Oklahoma, by Century Bank (the "Bank")  
for recovery of monies owed it under a promissory note executed  
by Defendants Invivo Research Laboratories, Inc. ("IRL"), and

Carl Shore ("Shore"). IRL and Shore admitted execution of the note and receipt of the proceeds, but asserted waiver, estoppel and fraud in the inducement as affirmative defenses.

2. On March 24, 1988, the Oklahoma State Banking Commissioner ("Commissioner") issued Order No. 88-R-12 and closed the Bank. Federal Deposit Insurance Corporation accepted appointment as liquidating agent (in such capacity, the "Liquidating Agent") pursuant to Okla. Stat., Tit. 6, §1205 and 12 U.S.C. 1821(e). Subsequently, Federal Deposit Insurance Corporation, in its corporate capacity ("FDIC") purchased certain assets from the Liquidating Agent pursuant to 12 U.S.C. 1823(c)(2)(A). Among the assets purchased by FDIC are the assets involved in this action.

3. On May 26, 1988, FDIC filed a Petition for Removal with this Court. On June 22, 1988, this Court entered an Order substituting FDIC as the real party in interest, in place of Century Bank. The Court also stayed the action until September 24, 1988, pursuant to Okla. Stat., Tit. 6, §1202(b)(3).

4. IRL is an Oklahoma corporation.

5. IRL and Shore were general partners in Forest Trails South, an Oklahoma partnership, at all times relevant hereto.

6. On or about March 15, 1985, IRL and Shore made and delivered to the Bank promissory note No. 26764, which was renewed by note No. 26764/1, with a maturity date of March 15, 1986 (the "Note").

7. In executing the Note, for good and valuable consideration, Defendants IRL and Shore agreed and bound themselves to pay to the order of the Bank the sum of \$115,000.00, plus interest at the rate of the Bank's prime plus 1.5% at all times from March 15, 1985, until paid.

8. The Defendants failed to make the payments required under the Note.

9. FDIC has succeeded to all the Bank's right, title and interest in the Note.

10. Upon default under the Note, FDIC is entitled to recover a reasonable attorney's fee.

11. As of the 11th day of January, 1989, the total principal sum due on the Note is \$115,000.00. The total aggregate interest due on the Note as of the same date is \$62,019.42. Interest continues to accrue at the rate of \$59.09 per diem.

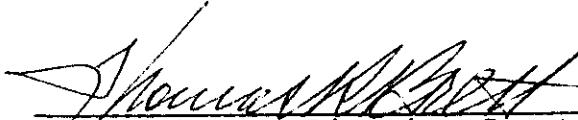
12. The Court has determined pursuant to its Order entered on the 23rd day of December, 1988, that there is no material question of fact to prevent summary judgment, for the reason that the defense has presented by Defendants IRL and Shore are barred as a matter of law.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

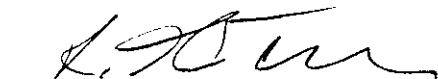
FDIC is granted judgment against Defendants Invivo Research Laboratories, Inc. and Carl Shore in the principal sum of \$115,000.00, together with accrued interest of \$62,019.42 as of January 11, 1989, interest accruing thereafter at the rate of \$59.09 per diem until the date of judgment, a reasonable

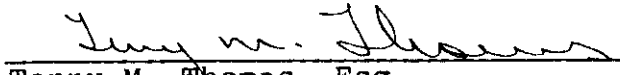



attorneys' fee in the amount of \$11,500.00, the cost of this action, and interest on the total sum from the date of judgment at the statutory rate.

  
United States District Court Judge

Approved as to Form:

  
R. David Whitaker, OBA No. 10520  
of BOESCHE, McDERMOTT & ESKRIDGE  
800 ONEOK Plaza  
100 West Fifth Street  
Tulsa, Oklahoma 74103  
(918) 583-1777  
ATTORNEYS FOR FEDERAL DEPOSIT  
INSURANCE CORPORATION

  
Terry M. Thomas, Esq.  
Norman, Wohlgemuth & Thompson  
909 Kennedy Building  
Tulsa, OK 74103  
ATTORNEYS FOR DEFENDANT  
INVIVO RESEARCH LABORATORIES, INC.

  
Ted Riseling, Esq.  
2510 E. 21st Street  
Tulsa, OK 74114  
ATTORNEY FOR DEFENDANT CARL SHORE

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 27 1989

E. L. POWELL AND SONS TRUCKING CO.,  
INC., an Oklahoma Corporation,

Plaintiff,

vs.

AMERICAN CRATING COMPANY, PROCESS  
PIPE FABRICATORS, INC., THE PRITCHARD  
CORPORATION, and BLACK & VEATCH  
COMPANY,

Defendants.

Case No. 88-C-1569B  
(OBA #9232)


STIPULATION OF DISMISSAL WITH PREJUDICE

Comes now the attorneys by and for the Plaintiff and Defendants in this cause, and stipulate to the dismissal of this with prejudice as a result of a final settlement.

It is requested of the Court that this matter be stricken from the court's jury docket.

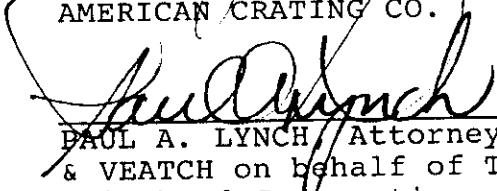
DATED:

January 19, 1989

  
PAUL E. VESTAL, Attorney for  
E. L. POWELL & SONS TRUCKING

  
FRANK D. SPIEGELBERG, Attorney  
for PROCESS PIPE FABRICATORS

  
BENJAMIN P. ABNEY, Attorney for  
AMERICAN CRATING CO.

  
PAUL A. LYNCH, Attorney for BLACK  
& VEATCH on behalf of The  
Pritchard Corporation

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED  
JAN 27  
JACK C. SIVEL, Clerk  
U.S. DISTRICT COURT

JULIE ANN VANLANDINGHAM,

Plaintiff,

v.

PRESCOR, INC., an Oklahoma  
Corporation,

Defendant.

No. 88-C-330 E

JOINT STIPULATION OF  
DISMISSAL OF ALL CLAIMS WITH PREJUDICE

COME NOW the parties hereto, by and through their attorneys of record, and pursuant to Fed. R. Civ. Proc. 41(a)(1)(ii), hereby stipulate that the captioned case is hereby dismissed in its entirety with prejudice. Each party is to bear its own attorneys' fees.

DALE WARNER

NICHOLS, WOLFE, STAMPER,  
NALLY & FALLIS, INC.

By: 

Dale Warner, #9359  
2512 East 21st Street  
Suite 200  
Tulsa, Oklahoma 74114  
(918) 749-4100

By: 

Carl D. Hall, Jr., #3716  
Frank B. Wolfe III, #9825  
400 Old City Hall Building  
124 East Fourth Street  
Tulsa, Oklahoma 74103  
(918) 584-5182

ATTORNEY FOR PLAINTIFF

ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

SWINSON CHEVROLET, INC.,

Plaintiff,

vs.

ELECTRONIC DATA SYSTEMS  
CORPORATION,

Defendant.

JAN 27 1989

No. 88-6216  
U.S. DISTRICT COURT  
Silver, Clerk

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, Swinson Chevrolet, Inc., and  
Defendant Electronic Data Systems Corporation, and stipulate to the  
dismissal of this cause with prejudice.

HUFFMAN, ARRINGTON, KIHLE,  
GABERINO & DUNN

By

Sidney K. Swinson  
1000 ONEOK Plaza  
Tulsa, Oklahoma 74103  
(918) 585-8141

Attorney for Plaintiff

SNEED, LANG, ADAMS,  
HAMILTON & BARNETT

By:

Kevin C. Leitch  
Sixth Floor  
114 East Eighth Street  
Tulsa, Oklahoma 74119  
(918) 583-3145

Attorneys for Defendant

CERTIFICATE OF MAILING

I, Kevin C. Leitch, do hereby certify that on the \_\_\_\_\_ day of January, 1989, I caused to be mailed a true and correct copy of the above and foregoing instrument, proper postage thereon prepaid, to:

Sidney K. Swinson, Esq.  
Huffman, Arrington, Kihle,  
Gaberino & Dunn  
1000 ONEOK Plaza  
Tulsa, Oklahoma 74103

  
\_\_\_\_\_  
Kevin C. Leitch

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL RAYNARD HENDERSON;

SHARON KAY HENDERSON a/k/a

SHARON KAY ADEKOYA;

RALPH W. MCINTOSH, JR.;

RALPH W. MCINTOSH, SR.;

MAUNTEL ELIZABETH JONES;

NORMAN TERRENCE SIMPSON;

ROCKNE E. PORTER;

HOWARD & WIDDOWS, P.C.;

COUNTY TREASURER, Tulsa County,

Oklahoma; BOARD OF COUNTY

COMMISSIONERS, Tulsa County,

Oklahoma, and JOHN DOE, Tenant,

Defendants.

FILED

JAN 27 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 87-C-1086-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27<sup>th</sup> day  
of Jan., 1989. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; Defendants, Mauntel Elizabeth Jones, Norman Torrence  
Simpson, Rockne E. Porter, Howard & Widdows, P.C., and County  
Treasurer, Tulsa County, Oklahoma, and Board of County  
Commissioners, Tulsa County, Oklahoma, appear not, having  
previously filed their Disclaimers; that the Defendant, John Doe,  
Tenant, appears not, having previously been dismissed from this  
foreclosure action; and Defendants, Michael Raynard Henderson,  
Sharon Kay Henderson a/k/a Sharon Kay Adekoya, Ralph W. McIntosh,  
Jr., and Ralph W. McIntosh, Sr., appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Michael Raynard Henderson,

acknowledged receipt of Summons and Complaint on January 7, 1988; that Defendant, Ralph W. McIntosh, Jr., was served with Summons and Complaint on December 7, 1988; that Defendant, Ralph W. McIntosh, Sr., was served with Summons and Complaint on December 7, 1988; that Defendant, Mauntel Elizabeth Jones, was served with Summons and Complaint on February 8, 1988; that Defendant, Norman Torrence Simpson, acknowledged receipt of Summons and Complaint on January 25, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 4, 1988.

The Court further finds that the Defendant, Sharon Kay Henderson a/k/a Sharon Kay Adekoya, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning September 14, 1988, and continuing to October 19, 1988, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Sharon Kay Henderson a/k/a Sharon Kay Adekoya, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor

filed herein with respect to the last known address of the Defendant, Sharon Kay Henderson a/k/a Sharon Kay Adekoya. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

It appears that Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on January 21, 1988, and their Disclaimers herein on June 8, 1988; that Defendant, Mauntel Elizabeth Jones, filed her Disclaimer herein on February 11, 1988; that Defendant, Norman Torrence Simpson, filed his Disclaimer herein on February 2, 1988; that Defendant, Rockne E. Porter, filed his Disclaimer herein on January 4, 1988; that Defendant, Howard & Widdows, P.C., filed its Disclaimer herein on January 4, 1988; that Defendant, Ralph W. McIntosh, Jr.,



filed his Acknowledgment of Receipt of Alias Summons in a Civil Action on January 4, 1989, asking the Court for an additional 20 days until January 24, 1989, in which to answer or plead and has failed to answer or otherwise move and his default has therefore been entered by the Clerk of this Court; and that the Defendants, Michael Raynard Henderson, Sharon Kay Henderson a/k/a Sharon Kay Adekoya, and Ralph W. McIntosh, Sr., have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Six (6), Block Two (2), SUBURBAN ACRES, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded amended plat thereof.

The Court further finds that on December 16, 1976, Michael Raynard Henderson and Sharon Kay Henderson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$9,750.00, payable in monthly installments, with interest thereon at the rate of eight and one-half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Michael Raynard Henderson and Sharon Kay Henderson executed and delivered to the United States of America, acting on behalf of the Administrator of

Veterans Affairs, a mortgage dated December 16, 1976, covering the above-described property. Said mortgage was recorded on December 21, 1976, in Book 4243, Page 2610, in the records of Tulsa County, Oklahoma.

The Court further finds that pursuant to a General Warranty Deed dated January 24, 1986, and filed of record on March 17, 1986, in Book 4930 at Page 1142 in the records of Tulsa County, Oklahoma, Sharon Kay Henderson, now Sharon Kay Adekoya, and Kehinde Adekoya, wife and husband, conveyed the above-described real property to Ralph W. McIntosh, Jr. who assumed and agreed to pay all amounts becoming due on the mortgage note and real estate mortgage described herein. The Plaintiff did not release the Defendants, Michael Raynard Henderson and Sharon Kay Henderson a/k/a Sharon Kay Adekoya, from their personal liability thereon.

The Court further finds that the Defendant, Ralph W. McIntosh, Jr., made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Michael Raynard Henderson and Sharon Kay Henderson a/k/a Sharon Kay Adekoya, are indebted to the Plaintiff in the principal sum of \$8,926.94, plus interest at the rate of 8.5 percent per annum from October 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, Mauntel Elizabeth Jones, Norman Torrence Simpson, Rockne E. Porter,

Howard & Widdows, P.C., and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, disclaim any right, title, or interest in the subject real property.

The Court further finds that the Defendant, John Doe, Tenant, was dismissed from this foreclosure action by Notice of Dismissal filed herein on August 26, 1988, and therefore has no right, title, or interest in the subject real property.

The Court further finds that the Defendants, Ralph W. McIntosh, Jr. and Ralph W. McIntosh, Sr., are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Michael Raynard Henderson and Sharon Kay Henderson a/k/a Sharon Kay Adekoya, in the principal sum of \$8,926.94, plus interest at the rate of 8.5 percent per annum from October 1, 1986 until judgment, plus interest thereafter at the current legal rate of 9.16 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Ralph W. McIntosh, Jr., Ralph W. McIntosh, Sr., Mauntel Elizabeth Jones, Norman Torrence Simpson, Rockne E. Porter, Howard & Widdows, P.C., John Doe, Tenant, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

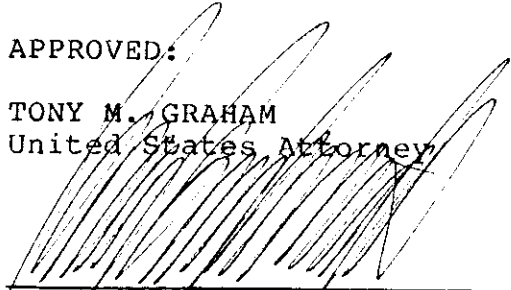
In payment of the judgment rendered herein in favor of the Plaintiff.

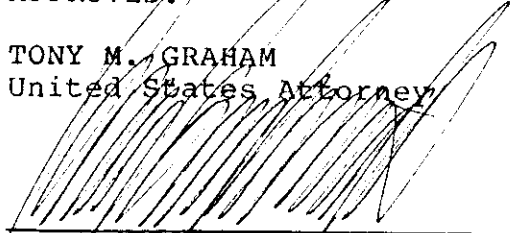
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT, OBA #741  
Assistant United States Attorney

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

TOOL SERVICE, INC.,

Plaintiff,

vs.

KENNAMENTAL, INC.,

Defendant.

No. 89-C-29-C

*87-C-319-E* **FILED**

**JAN 27 1989**

**ORDER**


Jack C. Silver, Clerk  
U.S. DISTRICT COURT

The Court has before it the complaint and application for a Temporary Restraining Order filed in the above captioned case.

The complaint requests the Court to order the defendant herein to comply with the terms of an agreement by which the same parties in Kennamental, Inc. v. Tool Service, Inc., N.D.Okla. No. 87-C-319-E, settled their disputes. Plaintiff herein improperly filed this action as a new independent case. The action should properly be filed by application to the Court under the original style and case number.

Therefore, the Court Orders this case dismissed and the pleadings transferred to the Honorable James O. Ellison in case Kennamental, Inc. v. Tool Service, Inc., N.D.Okla. No. 87-C-319-E.

IT IS SO ORDERED this 27 day of January, 1989.

  
H. DALE COOK  
Chief Judge, U. S. District Court

H. DALE COOK  
JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 27 1989

SAMSON RESOURCES COMPANY,  
a corporation,

Plaintiff,

v.

MISSISSIPPI RIVER TRANSMISSION  
CORPORATION, a corporation,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 88-C-406 C

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed.R.Civ.P. 41(a)(1)(ii), all parties appearing  
in the above-captioned action hereby dismiss with prejudice said  
action.

Respectfully submitted,

*Brian Huddleston*

R. K. Pezold, OBA #7100  
Kenneth J. Treece, OBA #12012  
Brian R. Huddleston, OBA #13295  
BRUNE, PEZOLD, RICHEY & LEWIS  
700 Sinclair Building  
Six East Fifth Street  
Tulsa, Oklahoma 74103  
(918) 584-0506

ATTORNEYS FOR PLAINTIFF  
SAMSON RESOURCES COMPANY

*Babette Patton*

William J. Legg, OBA #5360  
Babette Patton, OBA #10923  
S. Paul Hammons  
ANDREWS DAVIS LEGG BIXLER  
MILSTEN & MURRAH  
500 West Main  
Oklahoma City, Oklahoma 73102  
(405) 272-9241

ATTORNEYS FOR DEFENDANT  
MISSISSIPPI RIVER TRANSMISSION  
CORPORATION

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

DARRYL K. PEARSON,  
Plaintiff,

vs.

No. 88-C-71-B

NIAGARA MACHINE & TOOL WORKS,  
A Foreign Corporation; CHICAGO  
STEEL CONTAINER, A Foreign  
Corporation; E. PORTER ESSLEY  
CORPORATION, A Foreign  
Corporation; and OWENS-ILLINOIS  
INCORPORATED GLASS CONTAINER  
DIVISION, A Foreign Corporation,  
Defendants.

and

OWENS-ILLINOIS INCORPORATED  
GLASS CONTAINER DIVISION, a  
Foreign Corporation,

Third Party  
Plaintiff,

vs.

CONTINENTAL CAN COMPANY, INC.,  
a Foreign Corporation, and  
PETER KIEWIT SONS', INC.,  
a Foreign Corporation,

Third Party  
Defendants.

FILED

JAN 26 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

NOW on this 26<sup>th</sup> day of January, 1989 upon the  
written application of the plaintiff, Darryl K. Pearson, and the  
defendant, Chicago Steel Container, for a Dismissal with  
Prejudice of the plaintiff's Complaint against the defendant,  
Chicago Steel Container, only, in the case of Pearson vs.  
Niagara, et al., and all causes of action therein, the Court



having examined said Application finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint against said defendant, and have requested the Court to dismiss said Complaint with prejudice as to defendant, Chicago Steel Container, only, to any future action. The Court being fully advised in the premises finds that said settlement is in the best interest of the plaintiff, and that said Complaint against Chicago Steel Corporation, only, should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that all causes of action of the plaintiff, Darryl K. Pearson, against the defendant, Chicago Steel Container, only, be and the same hereby are dismissed with prejudice to any future action.

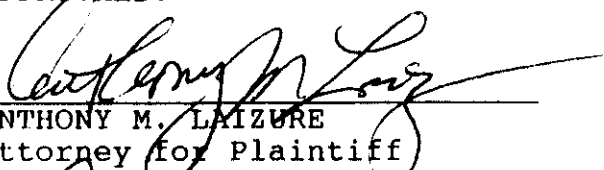
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff be allowed to proceed against the remaining defendants involved herein.


S/ THOMAS R. BRETT

---

JUDGE OF THE UNITED STATES  
DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

  
\_\_\_\_\_  
ANTHONY M. LAIZURE  
Attorney for Plaintiff

  
\_\_\_\_\_  
DAVID K. ROBERTSON  
Attorney for Defendant

FILED

JAN 26 1989

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ANITA RUSSELL,

Plaintiff,

v.

CHRYSLER MOTORS CORPORATION,  
a foreign corporation,

Defendant.

Case No. 88-C-1609E


ORDER PERMITTING SUBSTITUTION OF DEFENDANTS  
AND DISMISSAL OF DEFENDANT CHRYSLER MOTORS CORPORATION

On the stipulation of the parties filed herein, and Jeep Eagle Corporation and Jeep Eagle Sales Corporation having entered their appearance as defendants in this action in the place and stead of Chrysler Motors Corporation, and they having waived the issuance and service of summons, the Court approves the substitution of parties as proposed in the stipulation, and approves the dismissal of Chrysler Motors Corporation. The Defendants Jeep Eagle Corporation and Jeep Eagle Sales Corporation enter the case in the place and stead of Chrysler Motors Corporation as to all scheduling and time related matters.

It is hereby ordered that Jeep Eagle Corporation and Jeep Eagle Sales Corporation be substituted as defendants in the place and stead of Chrysler Motors Corporation and that such new parties are subject to the scheduling posture of the case as it applied to Chrysler Motors Corporation.

It is further ordered that Chrysler Motors Corporation be  
and hereby is dismissed from the action.

DATED: January 26<sup>th</sup>, 1989.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

JUN 20 1988

KARL W. BLADE, an individual, )  
Plaintiff, )  
vs. )  
R. WAYNE LOWE, an individual, )  
Defendant. )

MAILED  
U.S. DISTRICT COURT

Case No. 88-C-561-E

STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff and the Defendant in the above-captioned case,  
by their attorneys of record, hereby agree that the action shall  
be, and is hereby dismissed, with prejudice to the filing of any  
future action, pursuant to Federal Rule of Civil Procedure  
41(a)(1). Each party shall bear its own costs.

LAURENCE L. PINKERTON, OBA #7168  
P. DAVID NEWSOME, JR., OBA #6652  
DEIRDRE O. DEXTER, OBA #10780

BY: Deirdre O. Dexter

CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-8557

Attorneys for Plaintiff  
KARL W. BLADE

J. WARREN JACKMAN, OBA #4577  
JOHN F. McCORMICK, JR., #5915  
RANDALL G. VAUGHAN, OBA #11554

By: Randall G. Vaughan

PRAY, WALKER, JACKMAN,  
WILLIAMSON & MARLAR  
Oneok Plaza, 9th Floor  
Tulsa, Oklahoma 74103  
(918) 584-4136

H. DAVID MOORE  
Georgia Bar #519250

By: H. David Moore

CLARKE, MOORE, DALY,  
GRAHAM & HARTLEY  
P.O. Box 1990  
Warner Robins, Georgia 31099  
(912) 922-4221

Attorneys for Defendant  
R. WAYNE LOWE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
JUN 26 1988

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

MALCOLM BARNETT, as Personal )  
Representative of the Estate )  
of REGINA ANGINETTA BARNETT, )  
Deceased, and the Estate of )  
BABY ANDREW JORDEAMON BARNETT, )  
Individually, and as Natural )  
Parent and Grandparent, )

Plaintiff, )

vs. )

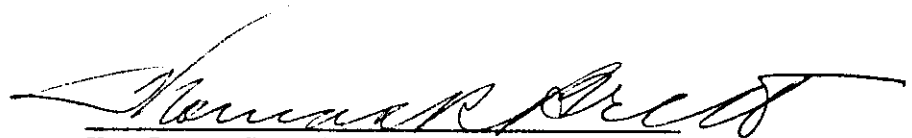
GERALD C. ZUMWALT, M.D.; )  
ROBERT G. WHITE, M.D.; )  
SAPULPA DOCTORS, INC., an )  
Oklahoma corporation; )  
BARTLETT MEDICAL CENTER, INC., )  
an Oklahoma corporation; and )  
CHARLES J. GEBETSBERGER, M.D., )

Defendants. )

NO. 87-C-277-B

ORDER OF DISMISSAL

Upon the application of the plaintiff and for good  
cause shown, this action is dismissed with prejudice.

  
U. S. DISTRICT JUDGE 1-26-89

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 26 1989

CLERK  
U.S. DISTRICT COURT

JESSE RAY HURST,

Plaintiff,

vs.

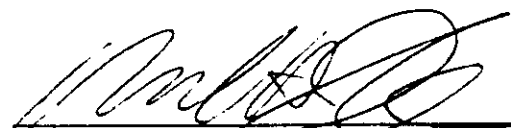
No. 88-C-85-B

FIBREBOARD CORPORATION, OWENS-CORNING FIBER- )  
GLASS CORPORATION, EAGLE-PICHER INDUSTRIES, )  
INC., PITTSBURG-CORNING CORPORATION, CELOTEX )  
CORPORATION, GAF CORPORATION, KEENE )  
CORPORATION, OWENS-ILLINOIS, INC., RAYMARK )  
INDUSTRIES, INC., H. K. PORTER COMPANY, )  
GARLOCK, INC., ARMSTRONG CORK COMPANY, )  
FLEXITALLIC GASKET COMPANY, INC., )  
and FLINTKOTE COMPANY, )

Defendants. )

JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereby file this joint stipulation of dismissal in the above-styled and captioned matter, it being agreed between the parties that such dismissal is in the best interest of judicial economy because Plaintiff Jesse Ray Hurst no longer wishes to pursue the litigation, it being further agreed that such dismissal should be without prejudice as to refiling.

  
Mark H. Iola OBA #4553  
Post Office Box 701917  
1323 East 71st Street, Ste. 300  
Tulsa, Oklahoma 74170-1979  
918/495-0550  
ATTORNEYS FOR PLAINTIFF

Scott M. Rhodes OBA #7533  
1215 Classen Drive  
Post Office Box 60130  
Oklahoma City, Oklahoma 73416  
405/235-6648  
ATTORNEY FOR OWENS-CORNING  
FIBERGLAS CORPORATION

John F. McCormick, Jr.  
John F. McCormick, Jr. OBA #5915  
900 ONEOK Plaza  
Tulsa, Oklahoma 74103  
ATTORNEY FOR WELLINGTON  
DEFENDANTS

Joan Godlove  
Joan Godlove OBA #10563  
3800 First National Tower  
Tulsa, Oklahoma 74103  
ATTORNEY FOR RAYMARK  
INDUSTRIES, INC.

Joe Michael Russell  
Joe Michael Russell  
302 North Market, Suite 501  
Dallas, Texas 75202  
ATTORNEY FOR EAGLE-PICHER  
INDUSTRIES, INC.

Stephen Boaz  
Stephen Boaz OBA #10620  
920 North Harvey  
Oklahoma City, Oklahoma 73102  
ATTORNEY FOR GARLOCK, INC.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JAN 25 1989

BITUMINOUS INSURANCE COMPANIES,

Plaintiff,

vs.

PETROLEUM MARKETERS EQUIPMENT  
COMPANY OF TULSA, INC., and KOOL-VENT  
ALUMINUM AWNING COMPANY, INC.,

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 88-C-776-B

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

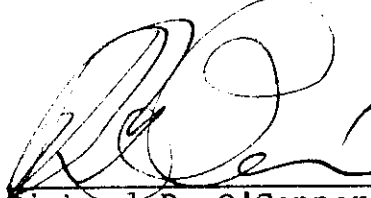
COMES NOW the Plaintiff, Bituminous Insurance Companies, by and through its attorney of record, Richard B. O'Connor; Defendant, Petroleum Marketers Equipment Company of Tulsa, Inc., by and through its attorney of record, Paul Boudreaux; and Defendant, Kool-Vent Aluminum Awning Company, Inc., by and through its attorney of record, Dale Ellis, who hereby stipulate that the cause of action of the Plaintiff, Bituminous Insurance Companies, should be dismissed without prejudice pursuant to the provisions of Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure.

It is further stipulated and agreed by and between the undersigned that the aforesaid Dismissal will not act as an adjudication upon the merits of the allegations contained in the Plaintiff's Complaint and that parties shall bear their own costs and attorney's fees.

As stipulated this 25 day of January, 1989.

Respectfully submitted,

LOONEY, NICHOLS, JOHNSON & HAYES



Richard B. O'Connor, OBA #11133  
528 N.W. 12th Street  
Oklahoma City, OK 73103  
(405) 235-7641

ATTORNEYS FOR PLAINTIFF, BITUMINOUS  
INSURANCE COMPANIES

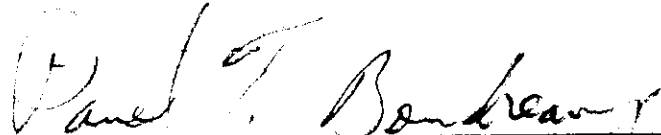
KNOWLES AND KING



Dale Ellis  
603 Expressway Tower  
2431 East 51st Street  
Tulsa, OK 74205

ATTORNEYS FOR DEFENDANT, KOOL-VENT ALUMINUM  
AWNING COMPANY, INC.

THOMAS, GLASS, ATKINSON, HASKINS,  
NELLIS & BOUDREAUX



Paul T. Boudreaux  
525 South Main, Suite 1500  
Tulsa, OK 74103

ATTORNEYS FOR DEFENDANT, PETROLEUM  
MARKETERS EQUIPMENT COMPANY OF TULSA, INC.

(CEH:lmm:12/1/88)

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ROBIN JOHN ERICKSON; ELLEN )  
ELIZABETH ERICKSON; AMBER )  
PATRICIA ERICKSON, a minor, )  
who sues by Robin John )  
Erickson, as next friend; and )  
KARYN MICHELLE ERICKSON, a )  
minor, who sues by Robin John )  
Erickson, as next friend, )

Plaintiffs, )

vs. )

FRONTIER AIRLINES, INC.; )  
PEOPLES EXPRESS, INC.; and )  
TEXAS INTERNATIONAL AIRLINES, )  
INC., )

Defendants. )

**FILED**

**JAN 25 1989**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 87-C-511-C

**ORDER OF DISMISSAL WITH PREJUDICE**

NOW on this 25 day of Jan, 1989, the  
above-styled and numbered cause coming on for hearing before  
the undersigned Judge of the United States District Court in  
and for the Northern District of Oklahoma upon the  
Stipulation for Dismissal of the Plaintiffs and Defendant  
herein; and the Court having examined the pleadings and being  
well and fully advised in the premises, is of the opinion  
that said cause should be dismissed with prejudice to the  
claim by the Plaintiffs, Robin John Erickson, Ellen Elizabeth  
Erickson, Amber Patricia Erickson and Karyn Michelle  
Erickson, minor children, by and through their father and  
next friend, Robin John Erickson, against the Defendant,  
Frontier Airlines, Inc.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the above-styled and numbered cause be and the same is hereby dismissed with prejudice to the claim by the Plaintiffs, Robin John Erickson, Ellen Elizabeth Erickson, Amber Patricia Erickson and Karyn Michelle Erickson, minor children, by and through their father and next friend, Robin John Erickson, against the Defendant, Frontier Airlines, Inc.

*Approved: R. Kenneth King*  
UNITED STATES DISTRICT COURT JUDGE

APPROVED:

*R. Kenneth King*  
\_\_\_\_\_  
R. Kenneth King  
Attorney for Plaintiffs

*Cary E. Hiltgen*  
\_\_\_\_\_  
Cary E. Hiltgen  
Attorney for Defendant

**FILED**

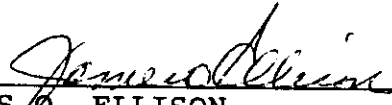
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 88-C-308-E

IT IS FURTHER ORDERED that the application of Plaintiff for an order of abeyance pending discovery is denied; and

IT IS FURTHER ORDERED that this case is set for scheduling conference on the 15<sup>th</sup> day of February, 1989 at 9:00 o'clock A.m. before the Honorable James O. Ellison.

ORDERED this 23<sup>rd</sup> day of January, 1989.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 25 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

EDWIN D. PHILLIPS,

Plaintiff,

vs.

LDX NET, INC.,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)

Case No. 87-C-377-E

ORDER OF DISMISSAL

NOW on this 24 day of January, 1989, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiff and the Defendant. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiff's Petition and claims for relief against Defendant, LDX Net, Inc., by and the same are hereby dismissed with prejudice. It is further

ORDERED that each party shall bear its own costs.

*[Signature]*

UNITED STATES DISTRICT JUDGE

*W. S. A. Book*  
JUDGE OF THE DISTRICT COURT



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**JAN 24 1989**

**Jack C. Silver, Clerk  
U.S. DISTRICT COURT**

WILLIAM J. PENNINGTON,

Plaintiff,

vs.

NO. 88-C-217 E

SEARS, ROEBUCK AND CO., a New York  
corporation, and JOHNSON CONTROLS,  
INC., a Wisconsin corporation,

Defendants.

ORDER OF DISMISSAL WITH PREJUDICE

Comes on before me, the undersigned judge, the partys' Stipulation of Dismissal With Prejudice.

Having found the Stipulation of Dismissal With Prejudice in compliance with FRCP 41(a)(1) and duly signed and approved by counsel for the plaintiff and counsel for the defendants, it is

HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's action be and is hereby dismissed with prejudice forever and for all time.

**57 JAMES G. ELISON**

~~JEFFREY SCOTT WOLFE~~

UNITED STATES MAGISTRATE

*Judge*

Copies to:

Mark W. Dixon, Works, Lentz & Pottorf, Inc., 50 East 15th Street, Tulsa, Oklahoma 74119.

Alfred K. Morlan, Jones, Givens, Gotcher, Bogan & Hilborne, 3800 First National Tower, Tulsa, Oklahoma 74103

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 24 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

KAISER ALUMINUM & CHEMICAL  
CORPORATION,

Plaintiff,

vs.

RKS, INC., CLACO, INC.,  
CLAY KING AND ROBERT J.  
SANDERS,

Defendants.

Case No. 87-C-93-E

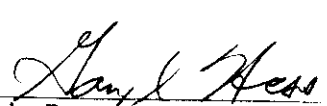
CONSENT JUDGMENT

Judgment is hereby entered pursuant to Rule 54 of the Federal Rules of Civil Procedure against RKS, Inc. as prayed for in the Amended Complaint. Kaiser Aluminum & Chemical Corporation shall recover from RKS, Inc. the amount of \$186,384.58, with interest accruing after entry of judgment.

SO ORDERED this 23 day of Jan, 1989.

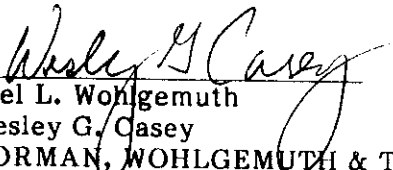
\_\_\_\_\_  
United States District Judge

APPROVED AS TO FORM:

  
Elsie Draper  
Gary S. Mess  
GABLE & GOTWALS  
2000 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74119-1217  
918/582-9201

ATTORNEYS FOR PLAINTIFF,  
KAISER ALUMINUM & CHEMICAL CORPORATION

ZSZ/09-88450A/lmc

  
Joel L. Wohlgemuth  
Wesley G. Casey  
NORMAN, WOHLGEMUTH & THOMPSON  
909 Kennedy Building  
Tulsa, Oklahoma 74103  
918/583-7571

ATTORNEYS FOR DEFENDANTS,  
RKS, INC., CLACO, INC., CLAY KING  
AND ROBERT J. SANDERS

FILED

JAN 24 1989

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

SPENCE RESEARCH INSTITUTE, INC.,

Plaintiff,

vs.

Case No. 88-C-566-E

BOB E. SURRETT, COLLEEN V. SURRETT,  
NEVER M. FAIL, JR., MARILYN K. FAIL,  
JOHN W. SUBLETT, LORENA P. SUBLETT,  
RUSSELL N. FAIL, PATSY FAIL, PETER  
L. BUTZ, SR., JANICE BUTZ, INSILCO  
CORPORATION, JIM WALTER HOMES, INC.,  
JEANNE SPERLING, MARIE DAVIS, DAVID  
JOE DAVIS, JAMES L. WEBB, MARY G.  
WEBB, BURTON KERR, JUDY C. KERR,  
SECURITY NATIONAL BANK, SAPULPA  
RANCH, INC., BOYD G. MCKAY, PAULA  
MCKAY, JOSEPH WEIDER, PHYLLIS A.  
WEIDER, and NICHOL ANN DAVIS,

Defendants.

JOURNAL ENTRY OF PARTIAL JUDGMENT  
AS TO THE DEFENDANTS,  
BOB E. SURRETT AND COLLEEN V. SURRETT, ONLY

THIS ACTION comes on for hearing this 24<sup>th</sup> day of January, 1989. The plaintiff appearing by and through its attorney of record, Doyle & Harris by Steven M. Harris, and the defendants, Bob E. Surrett and Colleen V. Surrett, appearing by and through their attorney of record, Pray, Walker, Jackman, Williamson & Marlar by James F. Bullock. After being fully advised in the pleadings in this matter and upon statements of counsel the Court finds as follows:

1. The plaintiff, Spence Research Institute, Inc., is a corporation having neither its place of incorporation nor

its principal place of business located in the State of Oklahoma.

2. The defendant, Bob E. Surret, is a citizen of the State of Oklahoma.

3. The defendant, Colleen V. Surret, is a citizen of the State of Oklahoma.

4. The parties have been unable to identify what interest the defendants, Bob E. Surret and Colleen V. Surret, have in the subject real property and therefore, the real property foreclosure action is reserved for further hearing.

5. The matter in controversy exceeds exclusive of interest and costs the sum of \$10,000.00

6. This Court has jurisdiction of the subject matter of this dispute and all causes of action asserted herein, pursuant to and in accordance with the provisions of 28 U.S.C. Section 1332.

7. Venue as to the defendants is proper in this judicial district pursuant to 28 U.S.C. Section 1391(a) because the defendants reside in this judicial district and the claim arose in this judicial district.

8. The parties by stipulation have agreed that the allegations contained in the Complaint filed by the plaintiff on the 17th day of June, 1988, shall be taken as true.

9. That the defendants, Bob E. Surret and Colleen V. Surret ("Surrets"), are indebted to the plaintiff in the

principal sum of one hundred forty thousand, eight hundred ninety and 87/100 dollars (\$140,890.87) plus accrued interest in the sum of three thousand, one hundred eight and 63/100 dollars (\$3,108.63), which has been reduced to one thousand, six hundred eighty-seven and 13/100 dollars (\$1,687.13), with interest accruing thereon at the rate of forty-one and 09/100 dollars (\$41.09) per day from the 2nd day of June, 1988, until paid, plus a reasonable attorney's fee and all costs of the action.

10. That plaintiff has a perfected security interest in all of the collateral described in Exhibit J of the plaintiff's Complaint, filed herein, and is entitled to immediate possession of said collateral, which is more particularly described as follows:

[Excerpt from Exhibit B of the Complaint, document page 1085.]

"All goods, chattels, accounts, contract rights, documents of title, chattel paper, general intangibles, goods to become fixtures and other items of personal property now owned or hereafter acquired by the Mortgagor, and used or useful in, or in any way pertaining or relating to, the acquisition, development, construction, ownership, operation, management or maintenance of the real property and improvements herein described, including, without limitation, construction building materials and supplies, the abstract of title covering the Mortgaged Premises, all leases, rents, deposits, royalties, all of Mortgagor's rights in, to and under any management agreement covering the Mortgaged Premises, insurance policies and proceeds, escrow accounts, condemnation or other awards, business records, blueprints, plans and specifications, architectural drawings and designs, maps documents, trade names,

furniture, furnishings, appliances, business machines, tools, landscaping and all future additions to, replacements of or substitutions for and proceeds and products of any of the foregoing items (whether cash or otherwise) including cash proceeds of all insurance policies pertaining thereto.

The term "award" shall include all amounts that Mortgagor may be entitled to receive as a result of defects in or damage to the Mortgaged Premises, whether such amount is determined by judgment, settlement, or otherwise. Mortgagor hereby assigns to Mortgagee the right to receive all awards, to the extent that such awards do not exceed the outstanding secured indebtedness at the time of the award. Mortgagee is hereby appointed as Mortgagor's attorney-in-fact for the receipt of awards and the endorsement of any instruments received in connection with an award. Mortgagee at its option may apply such awards or any part thereof against the secured indebtedness or pay the awards, or that portion of them not applied to the secured indebtedness, over to Mortgagor, subject to such conditions as Mortgagee may require. Mortgagee shall be notified of all defects in and damage to the Mortgage Premises affecting the value thereof, shall be included as a party plaintiff in all suits to collect damages as a result of such defects or damage, and no claims that may result in awards may be settled without Mortgagee's written consent. Mortgagee is hereby appointed as Mortgagor's attorney-in-fact to sue on or settle any claim that might result in an award, but Mortgagee shall have no duty to sue on or settle any such claim. These provisions shall apply regardless of the value of the Mortgaged Premises."

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT, that the plaintiff, Spence Research Institute, Inc., have and recover judgment against the defendants, Bob E. Surrett and Colleen V. Surrett, for the principal sum of one hundred forty thousand, eight hundred ninety and 87/100 dollars (\$140,890.87) plus accrued interest in the sum of

three thousand, one hundred eight and 63/100 dollars (\$3,108.63), which has been reduced to one thousand, six hundred eighty-seven and 13/100 dollars (\$1,687.13), with interest accruing thereon at the rate of forty-one and 09/100 dollars (\$41.09) per day from the 2nd day of June, 1988, until paid, and all costs of the action. The plaintiff shall make separate application to this Court for an award of attorney fees pursuant to local rule.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT, that the plaintiff, Spence Research Institute, Inc., has a perfected security interest in all of the collateral described in Exhibit J of the plaintiff's Complaint, filed herein, and is entitled to immediate possession of said collateral, which is more particularly described as follows:

[Excerpt from Exhibit B of the Complaint, document page 1085]

"All goods, chattels, accounts, contract rights, documents of title, chattel paper, general intangibles, goods to become fixtures and other items of personal property now owned or hereafter acquired by the Mortgagor, and used or useful in, or in any way pertaining or relating to, the acquisition, development, construction, ownership, operation, management or maintenance of the real property and improvements herein described, including, without limitation, construction building materials and supplies, the abstract of title covering the Mortgaged Premises, all leases, rents, deposits, royalties, all of Mortgagor's rights in, to and under any management agreement covering the Mortgaged Premises, insurance policies and proceeds, escrow accounts, condemnation or other awards, business records, blueprints, plans and specifications, architectural drawings and designs, maps documents, trade names,




furniture, furnishings, appliances, business machines, tools, landscaping and all future additions to, replacements of or substitutions for and proceeds and products of any of the foregoing items (whether cash or otherwise) including cash proceeds of all insurance policies pertaining thereto.

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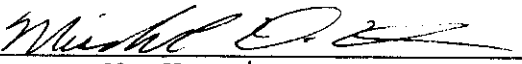
The defendants, Bob E. Surrentt and Colleen V. Surrentt, are ordered to surrender said collateral to plaintiff.

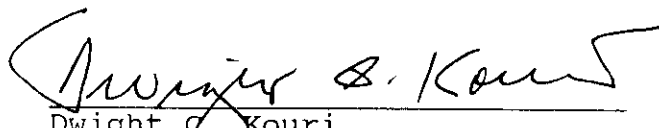
IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT, that the real property foreclosure action is reserved for further hearing to determine the designation of the real property collateral actually encumbered by plaintiff's

mortgage and that the defendants, Bob E. Surrett and Colleen V. Surrett, reserve their right to set-off pursuant to 12 O.S. Section 686.

  
JUDGE OF THE UNITED STATES  
DISTRICT COURT

APPROVED AS TO FORM AND  
CONTENT:


  
Steven M. Harris  
Michael D. Davis  
P.O. Box 1679  
Tulsa, OK 74101  
(918) 582-0090  
Attorneys for the Plaintiff

  
Dwight C. Kouri  
James F. Bullock  
900 Oneok Plaza  
Tulsa, OK 74103  
(918) 584-4136  
Attorneys for the Defendants,  
Bob E. Surrett and Colleen V.  
Surrett

**FILED**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 86-C-638-E

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

**JAN 24 1989**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

PEARL DORSEY,

Plaintiff,

vs.

OTIS R. BOWEN, M.D.,  
Secretary of Health and  
Human Services,

Defendant.

CIVIL ACTION NO. 88-C-827-C

ORDER OF REMAND

NOW before the Court for its consideration is the Motion to Remand of the Defendant Secretary of Health and Human Services.

No objection having been filed by Plaintiff within the time allowed by the Rules of this Court, and good cause being shown, it is hereby ordered that Defendant's Motion to Remand is sustained.

IT IS SO ORDERED this 23<sup>rd</sup> day of January, 1989.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CUSTOM EXHIBITS CORPORATION, )  
an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ALLIANCE SYSTEMS, INC., )  
a California corporation, )  
 )  
Defendant. )

Case No. 88-C-1524C

**FILED**

**JAN 24 1989**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

DEFAULT JUDGMENT

Defendant Alliance Systems, Inc., has been regularly served with process. It has failed to appear and answer the Plaintiff's Complaint herein. The default of Defendant has been entered. It appears that Defendant is not an infant or incompetent person.

IT IS ORDERED AND ADJUDGED that the Plaintiff, Custom Exhibits Corporation, an Oklahoma corporation, recover judgment from Alliance Systems, Inc. in the sum of \$21,544.00, plus a reasonable attorneys fee of <sup>is</sup> 2,000.00 together with the costs of this action.

DATED January 23, 1989.

*(Signature)*

\_\_\_\_\_  
JUDGE OF THE UNITED STATES  
DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

**JAN 24 1989**

BURTON HERMAN, JR., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CENTRAL OKLAHOMA FOODS, )  
INC., an Oklahoma corpor- )  
ation, and LANCER D. BEVIL, )  
an individual, )  
 )  
Defendants. )

Case No. 88-C-1606 C Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER OF DISMISSAL

NOW ON THIS 23<sup>rd</sup> day of January, 1989, there comes on for consideration the joint application of Burton Herman, Jr., Plaintiff; Central Oklahoma Foods, Inc., an Oklahoma corporation, and Lancer D. Bevil, an individual, Defendants, for dismissal of this matter.

IT IS THEREFORE ORDERED that the claims by the Plaintiff Burton Herman, Jr. against Central Oklahoma Foods, Inc. and Lancer D. Bevil, Defendants herein, be and are hereby dismissed with prejudice to the refiling of same. Each party is to bear its own costs and attorneys' fees incurred herein.

\_\_\_\_\_  
JUDGE OF THE UNITED STATES  
DISTRICT COURT

**F F I L E D**

)
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)

Case No. 86-C-715-E

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 24 1989

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

GARY L. RICHARDSON &  
ASSOCIATES, a partnership,

Plaintiff,

vs.

WESLEY R. MCKINNEY,

Defendant.

No. 88-C-1588-C

ORDER

This action commenced in state court, with plaintiff suing defendant for attorney fees allegedly owed. Defendant then filed a petition for removal of the state court action and a motion for leave to proceed in forma pauperis.


Defendant alleges that federal jurisdiction exists because of diversity of citizenship, in that "[p]laintiff is an Oklahoma resident, and Defendant is a California resident." (Petition for Removal at ¶1). However, as noted elsewhere in the Petition, defendant presently lives in California because he is a federal prisoner. Prior to that time, he was an Oklahoma resident. As a general rule, a prisoner incarcerated in a state other than his domicile will continue to retain his pre-incarceration domicile. See Jones v. Hadican, 552 F.2d 249 (8th Cir.), cert. denied, 431



U.S. 941 (1977). The defendant has made no showing requiring departure from that general rule. Thus, the Court will, sua sponte, remand this action for lack of jurisdiction. See also Whitelock v. Leatherman, 460 F.2d 507, 514 (10th Cir. 1972) (a federal court's jurisdiction must clearly appear from the face of the complaint or removal petition).

It is the Order of the Court that this action is hereby remanded to the District Court of Tulsa County, State of Oklahoma.


*IT IS SO ORDERED* this 23<sup>rd</sup> day of January, 1989.

  
H. DALE COOK  
Chief Judge, U. S. District Court

**F I L E D**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

**No. 86-C-1062-E**

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

**JAN 24 1989**

CONNIE FORD,

Plaintiff,

vs.

MATHEY INTERNATIONAL, LIMITED,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 88-C-1661-E

ORDER DISMISSING CLAIM OF RACIAL DISCRIMINATION  
AND REMANDING REMAINING CLAIMS TO STATE DISTRICT COURT

Upon the Stipulation of the parties seeking dismissal of Plaintiff's claim of racial discrimination and remand of all other claims to the state district court, the Court finds:

1. Plaintiff's claim of racial discrimination is hereby dismissed with prejudice.

2. The balance of Plaintiff's claims are hereby remanded to the state district court.

DATED this 24<sup>th</sup> day of January, 19 89.

  
U. S. DISTRICT COURT JUDGE

THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

**JAN 24 1989**

JAN ELLEN BATES,

Plaintiff,

vs.

CONTINENTAL INDUSTRIES, INC.,  
and HANDY & HARMAN

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT.

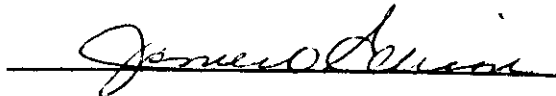
Case No. 87-C-439-E

STIPULATED JUDGMENT OF DISMISSAL

Upon consideration of the Joint Stipulation for Entry of Judgment submitted by all parties to this action, and in view of the parties' fair and reasonable settlement and resolution of all issues herein with the advice and assistance of counsel, it is hereby

ORDERED that this action be dismissed with prejudice, each party to bear its own attorney's fees and costs.

SO ORDERED this 23<sup>rd</sup> day of Jan., 1989.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 23 1989

BANK OF OKLAHOMA, N.A., GROVE  
BRANCH, formerly Bank of Okla-  
homa, Grove,

Plaintiff,

-vs-

THE ISLANDS MARINA, LTD. an  
Oklahoma corporation; CHARLES  
GARY JAMES; PATRICIA K. JAMES;  
GENMAR INDUSTRIES, INC., a  
Delaware corporation, d/b/a  
Wellcraft Marine; BANK OF THE  
LAKES OF LANGLEY, OKLAHOMA;  
FIRST NATIONAL BANK & TRUST  
COMPANY OF VINITA; CHRYSLER  
FIRST WHOLESALE CREDIT, INC.;  
DONZI CREDIT CORPORATION; FIRST  
OKLAHOMA SAVINGS BANK; GUARANTY  
NATIONAL BANK; ROBERT WILLIAMS;  
ROBERT MONTGOMERY and FIRST  
STATE BANK OF KETCHUM, OKLAHOMA,

Defendants,

-and-

EMERY URFER; FRANK A. JARVIS;  
JERRY COURTNEY; ROGER KING;  
and HARRIS-KAYOT, INC., d/b/a  
HARRIS FLOTEBOAT,

Additional  
Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 88-C-1335-E

(District Court of  
Delaware County,  
Oklahoma, Case No.  
C-88-148)

DISMISSAL OF DEFENDANT, FIRST STATE  
BANK OF KETCHUM, OKLAHOMA, WITHOUT PREJUDICE

COMES NOW the Plaintiff, Bank of Oklahoma, N.A., Grove Branch ("BOKG"), and dismisses its claim in the above action without prejudice as against the named Defendant, First State Bank of Ketchum, Oklahoma, only; BOKG does not dismiss this

action against any party other than First State Bank of Ketchum, Oklahoma.

DATED this 23rd day of January, 1989.

HOLLIMAN, LANGHOLZ, RUNNELS & DORWART,  
A Professional Corporation

By Robert Alan Rush  
Gregory A. Guerrero, OBA #3653  
Robert Alan Rush, OBA #13342  
Suite 700, Holarud Building  
Ten East Third Street  
Tulsa, Oklahoma 74103  
(918) 584-1471

Attorneys for Plaintiff,  
Bank of Oklahoma, N.A.,  
Grove Branch

CERTIFICATE OF SERVICE

This is to certify that a true and correct photostatic copy of the above and foregoing DISMISSAL OF DEFENDANT, FIRST STATE BANK OF KETCHUM, OKLAHOMA WITHOUT PREJUDICE was mailed on this 23rd day of January, 1989, with the proper postage prepaid thereon, to:

Jon D. Douthitt  
Post Office Box 487  
Jay, Oklahoma 74346  
Attorney for Defendants,  
The Islands Marina, Ltd.,  
Charles Gary James and  
Patricia K. James

Thomas F. Birmingham  
Ungerman, Conner & Little  
Post Office Box 701917  
Tulsa, Oklahoma 74170  
Attorneys for Defendants,  
Chrysler First Wholesale Credit, Inc.  
and Donzi Credit Corporation

Richard H. Foster  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
Attorneys for Defendant,  
Bank of the Lakes of  
Langley, Oklahoma

Richard W. Lowry  
Logan, Lowry, Johnston, Switzer,  
West & McGeady  
Post Office Box 558  
Vinita, Oklahoma 74301  
Attorneys for Defendant,  
First National Bank & Trust  
Company of Vinita

Thomas L. Vogt  
Jones, Givens, Gotcher,  
Bogan & Hilborne  
3800 First National Tower  
Tulsa, Oklahoma 74103  
Attorneys for Defendant,  
First Oklahoma Savings Bank

Bruce A. McKenna  
Jack B. Sellers Law  
Associates, Inc.  
Post Office Box 730  
Sapulpa, Oklahoma 74067  
Attorneys for Defendant,  
Robert (Bob) Williams

William H. Castor  
Rorschach, Pitcher, Castor & Hartley  
Post Office Box 492  
Vinita, Oklahoma 74301  
Attorneys for Defendant,  
Robert Williams, pending  
Order for Withdrawal

William W. Bailey  
Bailey & Fry, Inc.  
Post Office Box 276  
Vinita, Oklahoma 74301-0276  
Attorneys for Defendant,  
The First State Bank  
of Ketchum, Oklahoma

Richard D. James  
Wallace, Owens, Landers, Gee,  
Morrow, Wilson, Watson, James & Coiner  
Post Office Box 1168  
Miami, Oklahoma 74355  
Attorneys for Defendant,  
Jerry Courtney

David R. Frensley  
Frensley, Towerman & Willis, P.C.  
Suite 105  
801 West 47th Street  
Kansas City, Missouri 64112-1253  
Attorneys for Defendant,  
Jerry Courtney

Philard L. Rounds  
Newton & O'Connor  
1412 South Boston, Suite 1600  
Tulsa, Oklahoma 74119  
Attorneys for Defendant,  
Frank A. Jarvis

Phil Frazier  
Frazier, Smith & Phillips  
1424 Terrace Drive  
Tulsa, Oklahoma 74104  
Attorneys for Defendant,  
Emery Urfer

David Hyman  
Conner & Winters  
2400 First National Tower  
Tulsa, Oklahoma 74103  
Attorneys for Defendant,  
Guaranty National Bank

John B. Heatly  
Fellers, Snider, Blankenship,  
Bailey & Tippens  
2400 First National Center  
Oklahoma City, Oklahoma 73102  
Attorneys for Defendant,  
Federal Savings and Loan Insurance  
Corporation, as Receiver for First  
Oklahoma Savings Bank

Huffman, Arrington, Kihle,  
Gaberino & Dunn  
1000 Oneok Plaza  
Tulsa, Oklahoma 74103  
Attorneys for Defendant,  
Federal Savings and Loan Insurance  
Corporation, as Receiver for First  
Oklahoma Savings Bank



William E. Hughes  
Suite 1020  
320 South Boston  
Tulsa, Oklahoma 74103  
Attorneys for Defendant,  
Genmar Industries, Inc.,  
d/b/a Wellcraft Marine

Peter G. Mallers, II  
James P. Posey  
Beers, Mallers, Backs, Salin & Larmore  
1100 Fort Wayne Bank Building  
Fort Wayne, Indiana 46802  
Attorneys for Defendant,  
Harris-Kayot, Inc., d/b/a  
Harris Floteboat

B. Jack Smith  
Works, Lentz & Pottorf  
Boston Place Building  
50 East 15th Street  
Tulsa, Oklahoma 74119  
Co-Counsel for Defendant,  
Harris-Kayot, Inc., d/b/a  
Harris Floteboat

J. Peter Messler  
16 East 16th, Suite 404  
Tulsa, Oklahoma 74119  
Attorney for Defendant,  
Roger King

  
Robert Alan Rush

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOHN LEWIS EVANS a/k/a JOHN L.  
EVANS; COUNTY TREASURER,  
Washington County; and BOARD OF  
COUNTY COMMISSIONERS, Washington  
County, Oklahoma,

Defendants.

**FILED**

JAN 23 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-593-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23rd day  
of Jan, 1989. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, John Lewis Evans a/k/a John L. Evans  
and County Treasurer, Washington County, Oklahoma, and Board of  
County Commissioners, Washington County, Oklahoma, appear not,  
but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, County Treasurer,  
Washington County, Oklahoma, acknowledged receipt of Summons and  
Complaint on July 12, 1988; and that Defendant, Board of County  
Commissioners, Washington County, Oklahoma, acknowledged receipt  
of Summons and Complaint on June 27, 1988.

The Court further finds that the Defendant, John Lewis  
Evans a/k/a John L. Evans, was served by publishing notice of

this action in the Examiner-Enterprise, a newspaper of general circulation in Washington County, Oklahoma, once a week for six (6) consecutive weeks beginning October 6, 1988, and continuing to November 10, 1988, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, John Lewis Evans a/k/a John L. Evans, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, John Lewis Evans a/k/a John L. Evans. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Farmers Home Administration, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his present or last known place of residence and/or mailing address. The Court accordingly approves

and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

It appears that the Defendants, John Lewis Evans a/k/a John L. Evans and County Treasurer, Washington County, Oklahoma, and Board of County Commissioners, Washington County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Washington County, Oklahoma, within the Northern Judicial District of Oklahoma:

Tract #1  
PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (E/2 SW/4 NW/4) OF SECTION TWENTY-ONE (21), TOWNSHIP TWENTY-EIGHT (28) NORTH, RANGE THIRTEEN (13) EAST OF THE INDIAN MERIDIAN, WASHINGTON COUNTY, OKLAHOMA, DESCRIBED AS: BEGINNING AT A POINT ON THE EAST LINE OF SAID E/2 SW/4 NW/4 WHICH IS 7 FEET NORTH OF THE NORTHWEST CORNER OF LOT 12, BLOCK 10, GOFF ADDITION TO COPAN, OKLAHOMA, SAID POINT BEING AT THE WEST END OF WELDON AVE. AND 33 FEET SOUTH OF THE CENTER LINE THEREOF; THENCE WEST ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 167 FEET, 262.3 FEET TO A POINT OF TANGENT: THENCE SOUTH 0°21' WEST 133 FEET AS A POINT OF BEGINNING: THENCE S 0°21' WEST 75 FEET; THENCE EAST 162 FEET; THENCE NORTH ALONG THE WEST LINE OF WALKER'S ADDITION 75 FEET; THENCE WEST 167 FEET TO THE POINT OF BEGINNING.

The Court further finds that on December 8, 1983, the Defendant, John Lewis Evans a/k/a John L. Evans, executed and delivered to the United States of America, acting through the

Farmers Home Administration, his mortgage note in the amount of \$40,000.00, payable in monthly installments, with interest thereon at the rate of 10.75 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, John Lewis Evans a/k/a John L. Evans, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated December 8, 1983, covering the above-described property. Said mortgage was recorded on December 9, 1983, in Book 809, Page 58, in the records of Washington County, Oklahoma.

The Court further finds that on December 8, 1983, the Defendant, John Lewis Evans a/k/a John L. Evans, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on November 30, 1984, the Defendant, John Lewis Evans a/k/a John L. Evans, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, John Lewis Evans a/k/a John L. Evans, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, John Lewis Evans a/k/a

John L. Evans, is indebted to the Plaintiff in the principal sum of \$40,454.98, plus accrued interest in the amount of \$8,782.70 as of January 6, 1988, plus interest accruing thereafter at the rate of 10.75 percent per annum or \$11.9148 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$6,539.90, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Washington County, Oklahoma, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, John Lewis Evans a/k/a John L. Evans, in the principal sum of \$40,454.98, plus accrued interest in the amount of \$8,782.70 as of January 6, 1988, plus interest accruing thereafter at the rate of 10.75 percent per annum or \$11.9148 per day until judgment, plus interest thereafter at the current legal rate of 9.16 percent per annum from judgment until fully paid, and the further sum due and owing under the interest credit agreements of \$6,539.90, plus interest on that sum at the current legal rate of 9.16 percent per annum from judgment until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Washington County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

ST. JAMES G. ALLMON

---

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

PETER BERNHARDT, OBA #741  
Assistant United States Attorney



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL A. CLERE,

Plaintiff,

vs.

ERNST W. DORN COMPANY, INC., a  
California Corporation,

Defendant,

vs.

GENERAL RESEARCH, INC., ADVANCE  
PROCESS SUPPLY, INC., a division  
of American General Division,  
AMERICAN GENERAL DIVISION, INC.,  
and SAKURI CORPORATION,

Third Party Defendants.)

No. 88-C-678-C

**F I L E D**


**JAN 23 1989**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER OF DISMISSAL

NOW on this 23 day of January, 1989, upon the written application of the Defendant, Ernst W. Dorn Company, Inc., for a Dismissal Without Prejudice of its Third Party Petition against the Third Party Defendants, Advance Process Supply, Inc., and American General Division, Inc., only, in the case of Clere v. Dorn, et al., and all causes of action therein, against Advance Process Supply, Inc., and American General Division, Inc., only, the court having examined said Application finds that same should be sustained and the case should be dismissed without prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that all causes of action in the Third Party Petition of the Defendant, Ernst W. Dorn Company, Inc., against Advance Process Supply, Inc., and American General Division, Inc., only, be and the same hereby are dismissed without prejudice to any future action.

  
\_\_\_\_\_  
JUDGE OF THE UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 23 1989

WESTINGHOUSE ELECTRIC SUPPLY )  
COMPANY, a division of Westinghouse )  
Electric Corporation, a Pennsylvania )  
corporation, )

Plaintiff, )

vs. )

DIAL ELECTRIC SERVICE COMPANY, an )  
Oklahoma corporation, and JOHN M. )  
NOVAK, )

Defendants. . )

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 88-C-1224-E

JUDGMENT

JUDGMENT IS HEREBY ENTERED in favor of the Plaintiff,  
Westinghouse Electric Supply Company ("WESCO"), and against the  
Defendants, Dial Electric Service Company and John M. Novak,  
jointly and severally, for the sum of \$49,604.41, which sum  
includes:

(i) the remaining principal balance of  
Forty-Four Thousand, Eight Hundred Ninety  
Dollars and Eighty-Seven Cents (\$44,890.87),

(ii) accrued interest of \$4,713.54, that  
being the interest on all unpaid invoices from  
the date payment on each invoice was considered  
overdue, until December 1, 1988;

plus interest from and after December 1, 1988, until the date  
of judgment at the rate of eighteen percent (18%) per annum  
(which is a per diem of \$22.44) and interest on the principal

balance from and after the date hereof until paid at a rate set  
by 28 U.S.C.A. § 1961.

DATED this \_\_\_\_\_ day of January, 1989.

S/ JAMES O. ELLISON

Honorable James O. Ellison  
Judge of the District Court

Submitted by:

ANDREW R. TURNER  
MARY KAY MORRISSEY

By Mary Kay Morrissey  
Mary Kay Morrissey  
OBA #12420

CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

Attorneys for the Plaintiff,  
WESTINGHOUSE ELECTRIC SUPPLY  
COMPANY

FILED

JAN 23 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE  
CORPORATION,

Plaintiff,

vs.

No. 88-C-163-E

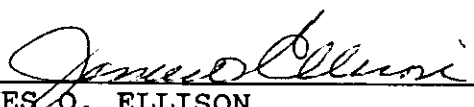
GRAYFOX OPERATING COMPANY,  
et al.,

Defendants.

JUDGMENT

Plaintiff is granted judgment against the Defendant W. L. Reiman d/b/a Bill's Tank Truck Service. Plaintiff is awarded its costs of this action.

ORDERED this 20<sup>th</sup> day of January, 1989.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

FILED

JAN 23 1989

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE  
CORPORATION,

Plaintiff,

vs.

Case No. 88-C-163-E

GRAYFOX OPERATING COMPANY, an  
Oklahoma corporation; GARY D.  
JONSON; W. L. RIEMAN d/b/a  
BILL'S TANK TRUCK SERVICE;  
and TRICO INDUSTRIES, INC.,

Defendants.

JOURNAL ENTRY OF JUDGMENT

This matter came on before this Court pursuant to the Motion for Summary Judgment filed herein by the Plaintiff, Federal Deposit Insurance Corporation, in its corporate capacity ("FDIC") on the 17th day of October, 1988. Plaintiff FDIC appeared by and through its attorneys of record, Gable & Gotwals, Inc. by J. Daniel Morgan. The Defendants Grayfox Operating Company ("Grayfox") and Gary D. Jonson ("Jonson"), appeared by and through their attorney of record, Philip R. Campbell. The Defendant Trico Industries, Inc. ("Trico") appeared by and through its attorneys of record, Conner & Winters, by Andrew R. Turner. Based upon a review of the pleadings herein and arguments of counsel, this Court finds as follows:

1. This Court has jurisdiction of this action under 12 U.S.C. § 1819, 28 U.S.C. § 1331, and 28 U.S.C. § 1345. Venue is properly laid in this district under 28 U.S.C. § 1391.

2. On May 8, 1986, Bank of Commerce & Trust Company ("Bank") was closed by the Oklahoma State Banking Commissioner (the "Commissioner"), who assumed exclusive custody and control of the property and affairs of the Bank, pursuant to 6 Okla. Stat. § 1202(b). The Federal Deposit Insurance Corporation was appointed as liquidating agent of the Bank ("FDIC-LA"), pursuant to 6 Okla. Stat. § 1205(b), and FDIC-LA sold certain

of the assets of the Bank to the FDIC. Among the assets sold and transferred were the notes, mortgages, and other agreements and documents which are the basis of this litigation. The FDIC is now the owner and holder of these assets and is the real party in interest.

3. Gable & Gotwals, Inc. has an attorneys' lien upon the FDIC's cause of action herein, which shall attach to this judgment in favor of the FDIC, and the proceeds thereof wherever found are also subject to Gable & Gotwals' attorneys' lien. This attorneys' lien is in an amount sufficient to compensate and reimburse Gable & Gotwals for all services performed and costs and expenses incurred on behalf of the FDIC in the prosecution of this action, together with interest thereon to the extent said sum shall remain unpaid after the date such sum becomes due and owing to Gable & Gotwals.

#### FIRST CLAIM FOR RELIEF

4. On or about April 23, 1986, Grayfox made, executed and delivered to the Bank a certain promissory note (the "Note"), whereby Grayfox promised and agreed to pay to the Bank the principal sum of \$193,921.89, with interest thereon as indicated in the Note.

5. In order to secure the Note, Grayfox executed a certain "Mortgage, Security Agreement, Financing Statement and Assignment" (the "Mortgage") in favor of the Bank, which covered all of Grayfox's right, title and interest in and to the property described on Exhibit "A", which is attached hereto and made a part hereof (the "Oil and Gas Property"), along with other property, which is described on Exhibit "B" (attached hereto and made a part hereof) and is hereinafter referred to as the "Additional Secured Property". The Mortgage was filed with the County Clerk of Osage County on February 12, 1985 and recorded at Book 670, beginning at Page 608, and filed with the County Clerk of Pawnee County on February 11, 1985, and recorded at Book 354, beginning at Page 572. In addition, the Bank filed certain Financing Statements covering the Additional Secured Property with the County Clerk of Osage County on February 12,

1985, the County Clerk of Pawnee County on February 11, 1985, and the County Clerk of Oklahoma County on February 11, 1985, and the FDIC has a properly perfected and recorded lien and mortgage upon all of the Oil and Gas Property and the Additional Secured Property.

6. On or about November 28, 1984, Grayfox made, executed and delivered to the Bank a certain Security Agreement (the "Inventory Security Agreement") which further secures all indebtedness of Grayfox to the Bank. Pursuant to the Inventory Security Agreement, Grayfox granted to the Bank a security interest in and to certain property of Grayfox which is described as follows:

A. All inventory of Debtor, now owned or hereafter acquired, and all additions, accessions and substitutions thereto and therefor, and all accessories, parts and equipment now or hereafter attached thereto or used in connection therewith;

B. All accounts of Debtor, now existing or hereafter arising;

C. All general intangibles of Debtor, now existing or hereafter arising;

D. All instruments, documents of title, policies and certificates of insurance, securities, chattel paper, deposits, cash or other property owned by Debtor or in which Debtor has an interest which are now or may hereafter be in possession of Bank;

E. All proceeds and products of the foregoing; and

F. All inventory, accounts, general intangibles, chattel paper, securities and instruments acquired with the proceeds of the foregoing and products of the foregoing.

(hereinafter referred to as the "Inventory Property").

7. Also to secure all indebtedness of Grayfox to the Bank, on or about November 28, 1984 Grayfox made, executed and delivered to the Bank a certain Security Agreement (the "Office Equipment Security Agreement"), which granted to the Bank a



security interest in and to all furniture, office equipment, supplies and oil library then owned or thereafter acquired by Grayfox (hereinafter referred to as the "Office Equipment Property").

8. The FDIC has a properly perfected security interest in and to the Inventory Property and the Office Equipment Property, for financing statements covering the same were filed with the County Clerk of Oklahoma County on March 30, 1984.

9. On or about November 28, 1984, and to further secure all obligations and indebtedness of Grayfox to the Bank, Grayfox made, executed and delivered to the Bank a certain security agreement (the "Brokerage Account Security Agreement") by which Grayfox granted the Bank a security interest in certain brokerage accounts (the "Brokerage Accounts") described as follows:

A. Prudential-Bache, Account No. 95896: balance 9-30-84: \$38,066.29;

B. Smith-Barney, Account No. 06E317071: balance 9-28-84: \$49,811.99.

10. The Inventory Security Agreement, Office Equipment Security Agreement and Brokerage Account Security Agreement are hereinafter collectively referred to as the "Security Agreements".

11. All of the property pledged to the Bank by virtue of the above-referenced mortgages and security agreements is hereinafter collectively referred to as the "Secured Property".

12. Grayfox is in default under the Note, and the FDIC has validly and properly declared the entire balance of the unpaid sums under the note due and payable, together with interest thereon and all costs and expenses of collection, including a reasonable attorneys' fee.

13. The FDIC is entitled to foreclose upon the Mortgage and the Security Agreements and is entitled to have all the Secured Property sold pursuant to execution upon this judgment.

14. All costs and expenses of this action, including a reasonable attorneys' fee, which may be allowed by this Court pursuant to Rule 6 of the Rules for the United States District Court for the Northern District of Oklahoma (the "Local Rules") are secured by the Mortgage and the Security Agreements.

15. After allowing all just and due credits, there remains due and owing to the FDIC under the Note the principal sum of \$175,478.13, plus interest in the amount of \$33,096.58 as of August 29, 1988, together with interest continuing to accrue from and after that date at the per diem rate of \$65.80 until the date of this judgment, along with all expenses, fees, charges, advances, taxes, assessments and costs relating to this action, including a reasonable attorneys fee (which costs and attorneys fees may be taxed under the procedure required pursuant to Rules 6(E) and 6(G) of the Local Rules), with post-judgment interest accruing on this judgment from and after the date of this judgment at the rate of 8.15% per annum (hereinafter collectively referred to as the "Judgment Amount.")

16. The FDIC and Trico have stipulated and agreed, and this Court hereby finds, as follows:

A. Trico claims no security interest in any pumping units or other equipment which are currently located upon any of the Oil and Gas Property;

B. The FDIC has no interest in any pumping units in which Trico currently holds a security interest, and the FDIC will not claim any such security interest unless and until any property in which Trico claims a security interest is placed upon any of the Oil and Gas Property.

C. This stipulation and agreement by and among Trico and the FDIC shall resolve the Counterclaim against the FDIC filed by Trico herein on April 22, 1988.

17. The FDIC has elected to have the Oil and Gas Property and Additional Secured Property sold with appraisement, and such election is hereby approved and said sale shall be with appraisement.

## SECOND CLAIM FOR RELIEF

18. On or about the dates of November 28, 1984, January 23, 1985, July 23, 1985 and April 23, 1986 Jonson made, executed and delivered to the Bank certain guaranty agreements (the "Guaranties"), by the terms of which Jonson guaranteed to the Bank that Grayfox would fully and promptly pay and discharge all indebtedness which Grayfox then owed or might thereafter owe to the Bank, and Jonson agreed within the Guaranties, without requiring the Bank to first proceed against Grayfox or to liquidate any security, to pay on demand all sums due or to become due under the terms of the Note, including all losses, costs, attorneys fees and expenses suffered or incurred by the Bank.

19. Demand has been made by the FDIC on Jonson for payment of the Indebtedness of Grayfox, and Jonson has failed to pay the same. Jonson therefore is liable to the FDIC in the Judgment Amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court as follows:

A. The FDIC shall have and recover of and from the Defendants Grayfox Operating Company and Gary D. Jonson, jointly and severally, an in personam judgment in the amount of \$175,478.13, with accrued interest in the amount of \$36,320.78 as of the date of this judgment, together with all costs of sale, including appraisal, publication and Sheriffs' fees, and with costs and attorneys fees as may be allowed pursuant to Rules 6(E) and 6(G) of the Local Rules, and with post-judgment interest continuing to accrue on this judgment after October 17, 1988 at the rate of 8.15% per annum, for all of which let execution issue.

B. The FDIC has a first and prior mortgage, lien and security interest in and to the Secured Property, and the lien of the FDIC is hereby adjudged and established to be a good and valid lien upon the Secured Property, and its judgment indebtedness is secured by said lien.

C. Trico has a first and prior mortgage, lien and security interest in and to the "Trico Collateral" (as that term is defined in the Agreed Pre-Trial Order filed by the parties herein), and the lien of Trico is hereby adjudged and established to be a good and valid lien upon the Trico Collateral, prior and superior to the interest of the FDIC and all other parties herein.

C. The FDIC has a good, valid, first and prior lien upon any and all pumping units and other equipment located upon the Oil and Gas Property, superior to the right, title or interest of any of the Defendants herein, and the FDIC shall not claim a security interest in the Trico Collateral unless and until such pumping units are placed upon the Oil and Gas Property.

D. Upon failure of the Defendant Grayfox Operating Company to satisfy the judgment of the FDIC as described above, the Sheriffs of Osage and Pawnee counties, in Oklahoma, shall levy upon the portions of the Oil and Gas Property and Additional Secured Property which are located within their respective counties, and after having the same appraised as provided by law, shall proceed to advertise and sell the same according to law, and shall immediately turn over the proceeds thereof to the Clerk of this Court who shall apply the proceeds arising from said sale as follows:


- i. In payment of the costs of this action, including costs of sale and attorneys fees;
- ii. In payment to the FDIC of its judgment as hereinabove set forth;
- iii. The residue, if any, shall be deposited with the Clerk of this Court to await further order of this Court.

E. Upon confirmation of the sales hereinabove ordered, the Sheriffs each shall execute and deliver good and sufficient deeds and assignments to the property sold by such Sheriffs to the purchaser(s), which shall convey all of the right, title, interest, estate and equity of redemption of all of the parties herein, and all persons claiming under all or any of the parties herein, and each of them, since the filing of this action,


and upon application of the purchaser(s), the Clerk of this Court shall issue a writ of assistance to said Sheriff who shall thereupon and forthwith place said purchaser(s) in full and complete possession and enjoyment of such property.

F. The FDIC has a good, valid first priority lien and security interest in and to the Inventory Property, the Office Equipment Property and the Brokerage Accounts, and upon entry of this Judgment the FDIC shall be entitled to execution upon the same, wherever located, and the proceeds therefrom shall immediately be applied to reduce the judgment granted herein in favor of the FDIC, after application to costs of collection and attorneys' fees.

G. From and after the sale of any of the Secured Property as ordered herein, all of the parties to this action, and each of them, and all persons claiming under them or any of them, shall be and they are hereby forever barred and foreclosed of and from any and every lien upon, right, title, estate or equity of redemption in or to such portion of the Secured Property.

  
UNITED STATES DISTRICT JUDGE

APPROVED AND AGREED TO:

  
J. Daniel Morgan  
Larry D. Thomas  
Jeffrey D. Hassell  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR FEDERAL DEPOSIT  
INSURANCE CORPORATION

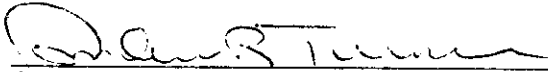
Journal Entry of Judgment Signature Page  
FDIC v. Grayfox Operating Company, et al.,  
Case No. 88-C-163-E, Northern District

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Philip R. Campbell  
24th Floor, Utica Tower  
Tulsa, Oklahoma

ATTORNEY FOR GRAYFOX OPERATING  
COMPANY

Journal Entry of Judgment Signature Page  
FDIC v. Grayfox Operating Company, et al.,  
Case No. 88-C-163-E, Northern District



Andrew R. Turner  
CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103

ATTORNEYS FOR TRICO INDUSTRIES, INC.

## EXHIBIT "A"

All of Grayfox Operating Company's right, title and interest in and to:

### OSAGE COUNTY

Hall:

A 12.0833% working interest and a 9.06247% net royalty interest and a 4.165% overriding royalty interest in a certain oil and gas lease dated October 31, 1979, wherein the lessor was the Osage Tribe of Indians by Sylvester J. Tinker, principal chief, covering the Southeast Quarter (SE/4) of Section Six (6), Township Twenty-four (24) North, Range Ten (10) East, Indian Meridian, subject to royalty and overriding royalty interests of record; and

### PAWNEE COUNTY

Greasy #1:

A 43.6375% working interest and a 31.717916% net royalty interest and a .8431964% overriding royalty interest in a certain oil and gas lease dated November 5, 1980, recorded at Book 268, beginning at Page 434 in the records of the County Clerk of Pawnee County, State of Oklahoma, wherein the lessor was Martin Ray Diehm, surviving trustee of the A.D. Fowler Trust, covering the Southwest Quarter of the Northeast Quarter of the Southeast Quarter (SW/4 NE/4 SE/4) of Section Twenty-one (21), Township Twenty-three (23) North, Range Three (3) East, Indian Meridian, subject to royalty and overriding royalty interests of record.



## EXHIBIT "B"

A. All Grayfox Operating Company's right, title and interest in, to and under, or derived from, operating agreements, unitization agreements, pooling agreements and orders of regulatory agencies providing for pooling the units created thereby, which relate to any of the properties and interest described in Exhibit "A" whether or not such agreements and orders are described in said Exhibit "A".

B. All Grayfox Operating Company's right, title and interest in, to and under, or derived from, oil, casinghead gas and gas sales, purchase, exchange and processing contracts and agreements, and all other contracts, agreements and instruments, whether now in existence or hereafter made, which relate to any of the properties and interests described in Exhibit "A" whether or not such contracts and agreements are described in said Exhibit "A".

C. All Grayfox Operating Company's right, title and interest in and to all personal property, physical property, improvements, easements, permits, licenses, servitudes and rights of way situated upon or used or useful or held for use in connection with the exploration, development or operation of the foregoing properties and interests or the production, treating, storing or transportation of oil, gas and other hydrocarbons therefrom, including, but not by way of limitation, casing, tubing, rods, powers, derricks, connections, tanks, separators, lines, pumps, building, sheds, wells fixtures, tools, machinery and other equipment, power lines, telephone and telegraph lines and other appurtenances, whether or not the same are described in Exhibit "A".

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEFFREY ALAN GRAFTON a/k/a  
JEFFREY A. GRAFTON a/k/a  
JEFFREY GRAFTON; REGINA F.  
GRAFTON a/k/a REGINA FAITH  
GRAFTON a/k/a REGINA GRAFTON;  
MIDAMERICA FEDERAL SAVINGS  
& LOAN ASSOCIATION; AMERICAN  
NATIONAL BANK AND TRUST CO.  
OF SAPULPA, OKLAHOMA;  
CHILDREN'S MEDICAL CENTER;  
COUNTY TREASURER, Creek County,  
Oklahoma; BOARD OF COUNTY  
COMMISSIONERS, Creek County,  
Oklahoma; BANK OF OKLAHOMA,  
N.A., TULSA, OKLAHOMA, as  
Trustee for the Creek County  
Home Finance Authority; MODERN  
AMERICAN MORTGAGE CORPORATION;  
and UNION NATIONAL BANK OF  
LITTLE ROCK,

Defendants.

**FILED**

**JAN 23 1989**

**Jack C. Silver, Clerk  
U.S. DISTRICT COURT**

CIVIL ACTION NO. 88-C-456-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23<sup>rd</sup> day  
of January, 1989. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States  
Attorney; the Defendants, County Treasurer, Creek County,  
Oklahoma, and Board of County Commissioners, Creek County,  
Oklahoma, appear by Wesley R. Thompson, Assistant District  
Attorney, Creek County, Oklahoma; the Defendant, American  
National Bank and Trust Co. of Sapulpa, Oklahoma, appears by its  
attorney Sam T. Allen IV; the Defendant, Children's Medical

Center, appears by its attorney Mark W. Dixon; the Defendants, Bank of Oklahoma, N.A., Tulsa, Oklahoma, as Trustee for the Creek County Home Finance Authority; Modern American Mortgage Corporation; and Union National Bank of Little Rock, appear by their attorney William D. Hunt; and Defendants, Jeffrey Alan Grafton a/k/a Jeffrey A. Grafton a/k/a Jeffrey Grafton; Regina F. Grafton a/k/a Regina Faith Grafton a/k/a Regina Grafton; and MidAmerica Federal Savings & Loan Association, appear not, but make default.

The Court being fully advised and having examined the file herein finds that Defendants, Jeffrey Alan Grafton a/k/a Jeffrey A. Grafton a/k/a Jeffrey Grafton and Regina F. Grafton a/k/a Regina Faith Grafton a/k/a Regina Grafton, were served with Summons and Amended Complaint on October 19, 1988; that Defendant, MidAmerica Federal Savings & Loan Association, was served with Summons and Amended Complaint on August 17, 1988; that Defendant, Children's Medical Center, acknowledged receipt of Summons and Complaint on May 25, 1988; that Defendant, Bank of Oklahoma, N.A., Tulsa, Oklahoma, as Trustee for the Creek County Home Finance Authority, acknowledged receipt of Summons and Amended Complaint on August 10, 1988; that Defendant, Modern American Mortgage Corporation, acknowledged receipt of Summons and Amended Complaint on August 10, 1988; that Defendant, Union National Bank of Little Rock, acknowledged receipt of Summons and Amended Complaint on August 10, 1988; that Defendant, County Treasurer, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on May 24, 1988; and that Defendant, Board of County Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on May 24, 1988.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer herein on June 9, 1988; that Defendant, American National Bank and Trust Co. of Sapulpa, Oklahoma, filed its Answer and Cross-Petition herein on May 31, 1988; that Defendant, Children's Medical Center, filed its Answers herein on May 27, 1988 and August 1, 1988; that Orders were entered herein on August 10, 1988, giving Defendants, Bank of Oklahoma, N.A., Tulsa, Oklahoma, as Trustee for the Creek County Home Finance Authority; Modern American Mortgage Corporation; and Union National Bank of Little Rock, until August 29, 1988, in which to plead or answer and on August 29, 1988, William D. Hunt attorney for Defendants, Bank of Oklahoma, N.A., Tulsa, Oklahoma, as Trustee for the Creek County Home Finance Authority; Modern American Mortgage Corporation; and Union National Bank of Little Rock, filed a Notice of Intent to Disclaim, and on November 21, 1988, Answers and Disclaimers were filed on behalf of said Defendants; and that Defendants, Jeffrey Alan Grafton a/k/a Jeffrey A. Grafton a/k/a Jeffrey Grafton, Regina F. Grafton a/k/a Regina Faith Grafton a/k/a Regina Grafton, and MidAmerica Federal Savings & Loan Association have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Six (6), Block Four (4) in Fife Place Addition to the City of Sapulpa, Creek County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on May 29, 1980, Jeffrey Alan Grafton and Regina F. Grafton executed and delivered to Modern American Mortgage Corporation their mortgage note in the amount of \$30,500.00, payable in monthly installments, with interest thereon at the rate of 11.45 percent per annum.

The Court further finds that as security for the payment of the above-described note, Jeffrey Alan Grafton and Regina F. Grafton executed and delivered to Modern American Mortgage Corporation a mortgage dated May 29, 1980, covering the above-described property. Said mortgage was recorded on June 3, 1980, in Book 85, Page 332, in the records of Creek County, Oklahoma. Plaintiff is now the owner and holder of said note and mortgage.

The Court further finds that the Defendants, Jeffrey Alan Grafton a/k/a Jeffrey A. Grafton a/k/a Jeffrey Grafton and Regina F. Grafton a/k/a Regina Faith Grafton a/k/a Regina Grafton, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Jeffrey Alan Grafton a/k/a Jeffrey A. Grafton a/k/a Jeffrey Grafton and Regina F. Grafton a/k/a Regina Faith Grafton a/k/a Regina Grafton, are indebted to the Plaintiff in the principal sum of \$32,203.74, plus interest at the rate of 9 percent per annum from December 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$4.39, plus penalties and interest, for the year 1987. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, American National Bank and Trust Co. of Sapulpa, Oklahoma, has a lien on the property which is the subject matter of this action in the amount of \$2,236.56, plus interest and costs, by virtue of a real estate mortgage dated October 17, 1985, and recorded on October 21, 1985, in Book 195, Page 1491, in the records of Creek County, Oklahoma. The note securing this mortgage is in default and the Defendant, American National Bank and Trust Co. of Sapulpa, Oklahoma, is therefore entitled to judgment against the Defendants, Jeffrey Alan Grafton a/k/a Jeffrey A. Grafton a/k/a Jeffrey Grafton and Regina F. Grafton a/k/a Regina Faith Grafton a/k/a Regina Grafton, in the amounts set forth above and to foreclosure of its mortgage.

The Court further finds that the Defendant, Children's Medical Center, has a lien on the property which is the subject matter of this action by virtue of a Journal Entry of Judgment, Case No. CS-85-04710, District Court, Tulsa County, Oklahoma, dated November 25, 1985, and recorded on December 13, 1985, in Book 198, Page 133, in the records of Creek County, Oklahoma, in the amount of \$1,710.00, together with interest thereon at the

rate of 15 percent per annum from date of judgment until paid, and for attorney's fee in the sum of \$340.00 and for interest thereon at the rate of 15 percent per annum from date of judgment until paid.

The Court further finds that the Defendants, Bank of Oklahoma, N.A., Tulsa, Oklahoma, as Trustee for the Creek County Home Finance Authority; Modern American Mortgage Corporation; and Union National Bank of Little Rock, disclaim all right, title, or interest in the subject real property.

The Court further finds that the Defendant, MidAmerica Federal Savings & Loan Association, is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Jeffrey Alan Grafton a/k/a Jeffrey A. Grafton a/k/a Jeffrey Grafton and Regina F. Grafton a/k/a Regina Faith Grafton a/k/a Regina Grafton, in the principal sum of \$32,203.74, plus interest at the rate of 9 percent per annum from December 1, 1986 until judgment, plus interest thereafter at the current legal rate of 9.16 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have and recover judgment in the amount of \$4.39 plus penalties and interest for personal property taxes for the year 1987.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, American National Bank and Trust Co. of Sapulpa, Oklahoma, have and recover judgment in the amount of \$2,236.56, plus interest and costs, by virtue of a real estate mortgage dated October 17, 1985, and recorded on October 21, 1985, in Book 195, Page 1491, in the records of Creek County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Children's Medical Center, have and recover judgment in the amount of \$1,710.00, together with interest thereon at the rate of 15 percent per annum from date of judgment until paid, and for attorney's fee in the sum of \$340.00 and for interest thereon at the rate of 15 percent per annum from date of judgment until paid, by virtue of a Journal Entry of Judgment, Case No. CS-85-04710, District Court, Tulsa County, Oklahoma, dated November 25, 1985, and recorded on December 13, 1985, in Book 198, Page 133, in the records of Creek County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, MidAmerica Federal Savings & Loan Association; Bank of Oklahoma, N.A., Tulsa, Oklahoma, as Trustee for the Creek County Home Finance Authority; Modern American Mortgage Corporation; and Union National Bank of Little Rock, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Jeffrey Alan Grafton a/k/a Jeffrey A. Grafton a/k/a Jeffrey Grafton and Regina F. Grafton a/k/a Regina Faith Grafton a/k/a Regina Grafton, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be



issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendant, American National Bank and Trust Co. of Sapulpa, Oklahoma, in the amount of \$2,236.56, plus interest and costs;

Fourth:

In payment of the Defendant, Children's Medical Center, in the amount of \$1,710.00, together with interest thereon at the rate of 15 percent per annum from date of judgment until paid, and for attorney's fee in the sum of \$340.00 and for interest thereon at the rate of 15 percent per annum from date of judgment until paid;

Fifth:

In payment of Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, in the amount of \$4.39, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

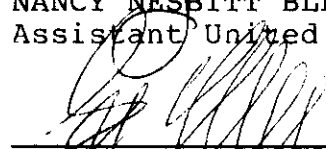
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

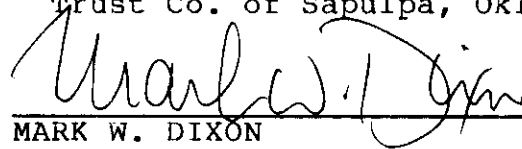
  
UNITED STATES DISTRICT JUDGE

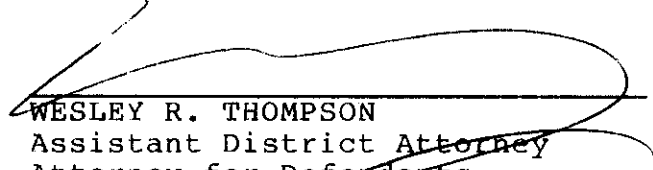
APPROVED:

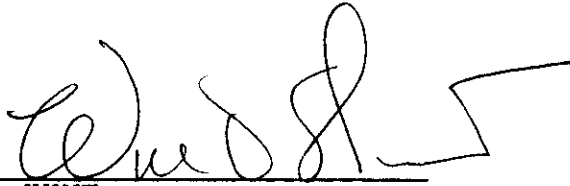
TONY M. GRAHAM  
United States Attorney

  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

  
SAM T. ALLEN IV  
Attorney for Defendant,  
American National Bank and  
Trust Co. of Sapulpa, Oklahoma

  
MARK W. DIXON  
Attorney for Defendant,  
Children's Medical Center

  
WESLEY R. THOMPSON  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Creek County, Oklahoma

A handwritten signature in black ink, appearing to read 'W.D. Hunt', with a long horizontal stroke extending to the right.

WILLIAM D. HUNT

Attorney for Defendants,  
Bank of Oklahoma, N.A., Tulsa,  
Oklahoma, as Trustee for the  
Creek County Home Finance Authority,  
Modern American Mortgage Corporation,  
Union National Bank of Little Rock

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 20 1989

MICHELLE UNDERKOFER, Personal )  
Representative of the Estate )  
of Dorothy Frizelle, Deceased, )

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Plaintiff, )

v. )

No. 88-C-76-E

JASPER McPHAIL, M.D.; GRADY )  
CORE, M.D.; P.M. PAN, M.D.; )  
FRANCIS KUMAR, M.D.; and )  
CITY OF FAITH MEDICAL AND )  
RESEARCH CENTER, an Oklahoma )  
corporation, )

Defendants. )

APPLICATION FOR DISMISSAL WITH PREJUDICE

Come now the parties hereto and would show the show that  
this matter has been concluded between the parties, and  
plaintiff therefore moves for a dismissal with prejudice of this  
action.

Michelle Underkoffler  
Michelle Underkoffler, Plaintiff

James J. Senter  
Attorney for Plaintiff

Joseph M. Best  
Atty for Deft. Drs

Sandra J. Rodolf  
Atty for Deft. COF

*Outland*

ORDER OF DISMISSAL

Now on this 19 day of January, 1989, the Court has for consideration the Application for a Dismissal with Prejudice of this action. The Court finds that the same should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that this action be and the same is hereby dismissed with prejudice to the filing of a future action.

---

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JAN 20 1989

J. EDWIN PATTON, JR.,

Plaintiff,

vs.

JOYCE DEE CARMAN, Individually  
and as Personal Representative  
of the Estate of Helen Mae  
Dillon, Deceased,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 89-C 0004 E

ORDER OF REMAND

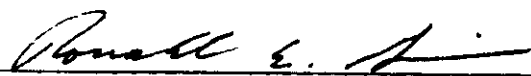
The Joint Motion of Plaintiff, J. Edwin Patton, Jr., and Defendant, Joyce Dee Carman to remand the above entitled action to the District Court of Tulsa County, State of Oklahoma, from whence it came, having regularly come on to be heard by this Court, and the Court having considered such motion, and all proceedings heretofore had herein, and being advised that the parties jointly request such remand, and it appearing to this Court that the above entitled action was removed to this Court improvidently, this Court being without jurisdiction over the above entitled action, since the Defendant is a citizen and resident of the State of Oklahoma, County of Tulsa, it is, therefore:

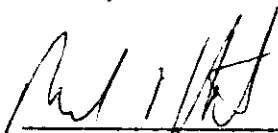
ORDERED that the above entitled action be and it hereby is remanded to the District Court of Tulsa County, State of Oklahoma.

Done on this 20 day of January, 1989.

United States District Judge

Approved as to Form and Content:

  
\_\_\_\_\_  
Ronald E. Goins OBA #3430  
Holliman, Langholz, Runnels & Dorwart  
Attorney for Plaintiff  
Suite 700, Holarud Building  
Ten East Third St.  
Tulsa, Oklahoma 74103

  
\_\_\_\_\_  
Mark O. Thurston OBA #9008  
Attorney for Defendant  
5314 S. Yale, Suite 310  
Tulsa, Oklahoma 74135  
(918) 496-9258

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

HUGH ROBERTSON,

Plaintiff,

vs.

TOM ATKINSON and THE  
METROPOLITAN TULSA TRANSIT  
AUTHORITY, a public trust  
authority,

Defendants.

No. 87-C-731-B

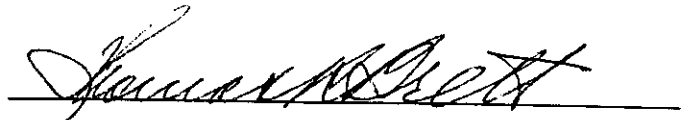
JAN 19 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

J U D G M E N T

Pursuant to the Court's Order entered this date sustaining Defendants' Motion for Summary Judgment, Judgment is hereby entered in favor of the Defendants, Tom Atkinson and The Metropolitan Tulsa Transit Authority, and against the Plaintiff, Hugh Robertson. Plaintiff's action is hereby dismissed. The parties are to pay their own respective costs and attorneys fees incurred.

DATED this 19<sup>th</sup> day of January, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**JAN 19 1989**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

HUGH ROBERTSON,

Plaintiff,

vs.

TOM ATKINSON and THE  
METROPOLITAN TULSA TRANSIT  
AUTHORITY, a public trust  
authority,

Defendants.

No. 87-C-731-B

**ORDER**

This matter comes before the Court upon Defendants' Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56. Plaintiff initiated this suit to redress alleged violations of his constitutionally protected liberty and property rights when he was terminated from his employment without a pretermination hearing.

Plaintiff was employed as a bus driver for the Metropolitan Tulsa Transit Authority ("MTTA") for ten years. Plaintiff also served as a union representative and was responsible for relaying member's grievances to Tom Atkinson. Plaintiff went to Defendant Atkinson's office to discuss two grievances; however, only one grievance was resolved. As Plaintiff was leaving, Lou Vice walked past Plaintiff in the hallway and heard Plaintiff utter, "You ignorant son of a bitch." Defendant Atkinson also heard the statement. Both Atkinson and Vice assumed Robertson was referring to Atkinson, but Robertson states he was referring to himself. (Atkinson Depo. at pp. 22, 26; Robertson Depo. at p. 7). Atkinson followed Plaintiff into the driver's room and fired the Plaintiff for verbal assault. Plaintiff asked Atkinson to call the union

president and other union officers for a meeting. (Atkinson Depo. at p. 27). A few minutes later Plaintiff, the union president, and other union officers went to a meeting with Atkinson to discuss the termination. Atkinson provided the union representative with a letter terminating Plaintiff's employment based upon verbal assault. Plaintiff intentionally remained silent at this meeting and did not express his side of the story. (Robertson Depo. at pp. 8-10). Pursuant to the union collective bargaining agreement, Plaintiff's grievance went to arbitration. The arbitrator concluded Plaintiff was terminated for improper cause and awarded reinstatement with back pay. Therefore, the only remaining issues are whether the Defendants' actions violated Plaintiff's constitutional rights when Plaintiff was wrongfully terminated.

Plaintiff's first claim for relief alleges a due process violation because he was fired without a pretermination hearing. Generally, one who has an expectation of continued employment must be afforded a pretermination hearing before an adverse employment decision may be taken. Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). When Defendant Atkinson fired Plaintiff for verbal assault, Plaintiff stated he wanted to contact the union representatives for a meeting with Atkinson. Atkinson agreed to the meeting, although he stated Plaintiff was no longer going to work for MTTA. Atkinson held the meeting with Plaintiff and the union representative a few minutes later. (Robertson Depo. at p. 9). Although Loudermill holds that a hearing should be conducted prior to an adverse employment decision, any effect from conducting

the hearing a few minutes after oral termination would be de minimus, provided the hearing allowed the employee an opportunity to present his position. Burch v. Rame, 676 F.Supp. 1218 (S.D. Ga. 1988). When Atkinson gave Plaintiff a formal letter detailing the grounds for termination at the meeting, Plaintiff intentionally chose not to present his side of the story. The purpose behind a pretermination hearing is to prevent disciplinary actions based upon ex parte charges. Id. Plaintiff cannot now complain he was denied due process when he twice intentionally chose not to present his side of the story.

Plaintiff also asserts his property and liberty interests were violated. As Plaintiff has been reinstated with full benefits, the property interest claim is moot. Although Plaintiff's Response to the Motion for Summary Judgment does not address the liberty interest, the claim was presented in the Complaint.

"The [Supreme] Court has held that for an employee to make a successful liberty deprivation claim [he] must show that [his] dismissal resulted in the publication of information which was false and stigmatizing --information which had the general effect of curtailing [his] future freedom of choice or action." (citations omitted).

Asbill v. Housing Authority of Choctaw Nation, 726 F.2d 1499, 1503 (10th Cir. 1984). Plaintiff offers no proof, whether by deposition testimony or affidavit, to support a liberty deprivation claim. A party opposing a motion for summary judgment cannot rely upon mere allegations, but bears the responsibility of producing more than a scintilla of evidence to support his position. Celotex v.

Catrett, 477 U.S. 317 (1986). Although a non-moving party is entitled to all reasonable inferences, inferences based upon speculation and conjecture is not reasonable and will not be made by the Court. Blackston v. Shook & Fletcher Insulation Co., 764 F.2d 1480, 1482 (11th Cir. 1985).

Plaintiff's third claim for relief is for Defendants' violation of his right to free speech. Plaintiff contends he was wrongfully terminated when he uttered the epitaph. Plaintiff's speech, however, is not the type of speech sought to be protected under the First Amendment.

"In Connick v. Myers, 461 U.S. 138 (1983), the [Supreme] Court held that if the activity engaged in by a public employee 'cannot be fairly characterized as constituting speech on matters of public concern, it is unnecessary for us to scrutinize the reasons for her discharge. When employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment.' 461 U.S. at 146."

Sipes v. United States, 744 F.2d 1418, 1423 (10th Cir. 1984). In this instance, Plaintiff's statement cannot be fairly considered as relating to any matters of public concern. The Connick Court concluded:

"We hold only that when a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the

employee's behavior."

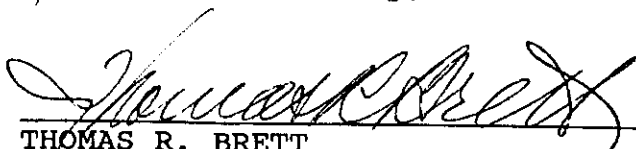
Connick at 147. As this case presents no unusual circumstances, Plaintiff's first amendment claim must fail.

Plaintiff's final claim alleges he was terminated for engaging in union activities. Plaintiff offers no affidavits or depositions supporting a claim for retaliatory discharge other than the assertion in the Complaint and the facts presented do not support Plaintiff's claim. Plaintiff had concluded the union meeting, left the room, and uttered a colorful epitaph in the hallway. All of the evidence presented focuses upon Plaintiff's termination for uttering the epitaph, and not for any union activities. Although Plaintiff had just concluded a union meeting, Plaintiff's evidence is insufficient to overcome the threshold requirements of Celotex and to support a claim for retaliatory discharge.

For the reasons stated above the issue of punitive damages is moot.

Therefore, Defendants' Motion for Summary Judgment is SUSTAINED. A separate Judgment shall be entered in keeping with the above this date.

IT IS SO ORDERED, this 19<sup>th</sup> day of January, 1989.

  
\_\_\_\_\_  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 19 1980

BANK OF THE LAKES OF LANGLEY,  
OKLAHOMA, an Oklahoma  
corporation,

Plaintiff,

vs.

LIBERTY MUTUAL FIRE INSURANCE  
COMPANY, a Massachusetts  
corporation,

Defendant.

Case No. 88-C-1239-B

JACK D. SUMNER, CLERK  
U.S. DISTRICT COURT

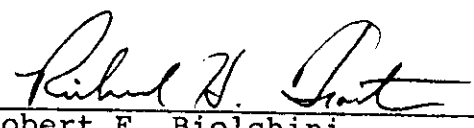
JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff, Bank of the Lakes, and Defendant, Liberty Mutual Fire Insurance Company, hereby stipulate as to the dismissal with prejudice of all claims in the above-referenced action, with each party to bear its own costs and attorney's fees.

DATED this 19<sup>th</sup> day of <sup>January</sup> ~~December~~, 198<sup>9</sup>.


DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By:

  
Robert F. Biolchini  
Richard H. Foster  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211  
Attorneys for Plaintiff,  
Bank of the Lakes

McGIVERN, SCOTT, GILLIARD,  
McGIVERN & ROBINSON

By:

  
Eugene Robinson  
P. O. Box 2619  
Tulsa, Oklahoma 74101-2619  
(918) 584-3391  
Attorneys for Defendant,  
Liberty Mutual Fire Insurance  
Company

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 19 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

VIP SALES COMPANY, an Oklahoma  
Corporation,

Plaintiff,

v.

GENERAL FOODS MANUFACTURING  
CORPORATION, a Delaware  
corporation,

Defendant.

No. 88-C-10-B

ORDER OVERRULING MOTION FOR SUMMARY JUDGMENT  
OF GENERAL FOODS MANUFACTURING CORPORATION

The Court has for decision the Motion for Summary Judgment of the Defendant General Foods Manufacturing Corporation ("General Foods") against the Plaintiff VIP Sales Company ("VIP") filed pursuant to Fed.R.Civ.P. 56.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Where there is an absence of material issues of fact, then the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.E.2d 202 (1986); Widon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986); Commercial Iron & Metal Co. v. Bache & Co., Inc., 478 F.2d 39, 41 (10th Cir. 1973); and Ando v. Great Western Sugar Company, 475 F.2d 531, 535 (10th Cir. 1973).

Following a thorough review of the briefs of legal authorities and arguments of the parties in support and in opposition the Court concludes controverted fact issues remain regarding the following:

(1) Whether "Grade A" referred to the United States Department of Agriculture's grading specifications or Birds Eye Division of General Foods Corporation's written specifications.<sup>1</sup>


(2) Whether the freezer burn on the Grade A corn occurred before or after delivery to Americold.

(3) Whether the Grade B corn conformed to the contract specifications.

(4) Whether VIP's rejection of the corn was timely.

Therefore, Defendant's Motion for Summary Judgment is OVERRULED.

DATED this 19<sup>th</sup> day of January, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

---

<sup>1</sup>The General Foods Corporation is a distinct legal entity from General Foods Manufacturing Corporation. Furthermore, it is unclear whether "packer's grade" is synonymous with Birds Eye specifications or whether packer's grade is a grading system distinct from both the USDA and the Birds Eye specifications. (See Defendant's Motion at p. 2, ¶ 2 and p. 3, ¶ 4).



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILE

JAN 19 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

VIP SALES COMPANY, an Oklahoma  
Corporation,

Plaintiff,

v.

GENERAL FOODS MANUFACTURING  
CORPORATION, a Delaware  
corporation,

Defendant.

No. 88-C-10-B

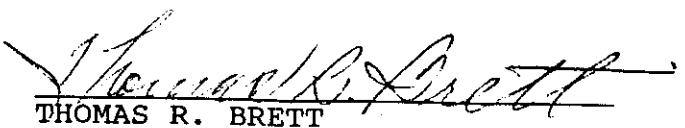
ORDER

This matter comes before the Court upon Plaintiff's Motion to Extend Time to Amend its Complaint. The Court finds there is just cause to approve the Motion and the parties are ordered to adhere to the following schedule with regard to Plaintiff's added theory of relief:

February 17, 1989	Deadline for filing Dispositive Motions
February 27, 1989	Responses to Dispositive Motions
March 6, 1989	Replies to Response to Dispositive Motions
March 16, 1989	Pretrial Conference and Hearing on Motions at 9:45 a.m.

The Court will set a trial schedule at the pretrial conference for following disposition of all pending motions.

IT IS SO ORDERED, this 19th day of January, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 19 1989  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ROGER HIMSTREET and SHARON  
HIMSTREET, formerly Husband and  
Wife,

Plaintiffs,

vs.

No. 88-C-225-B


CITY OF BARNSDALL, a munici-  
pality within the State of  
Oklahoma, and JESSE GARRETT,  
an individual,

Defendants.

J U D G M E N T

In keeping with the Court's Orders of December 7, 1988 and January 19, 1989, Judgment is hereby entered in favor of the Defendants, City of Barnsdall, The Board of County Commissioners of the County of Osage, Jesse Garrett and Bill Williams, and against the Plaintiffs, Roger Himstreet and Sharon Himstreet. Costs are assessed against the Plaintiffs and each party is to pay their own respective attorney fees.

DATED this 19th day of January, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NCR CORPORATION,

Plaintiff,

vs.

CLAYTON E. WOODRUM, M. D.  
RITTENBERRY,

Defendants.

Case No. 88-C-1421C

FILED

JAN 19 1989

Jack C. Silver, Clerk

J U D G M E N T

THIS MATTER comes on before the undersigned Judge of the District Court upon the stipulation of the parties. Based on those stipulations, the Court finds:

1. Plaintiff is a Delaware corporation with its principal place of business in Dayton, Ohio. Defendant Clayton E. Woodrum is an individual residing in the Northern District of Oklahoma. M. D. Rittenberry is an individual residing in the State of Florida. The transactions which form the basis of this complaint occurred in Tulsa, Oklahoma. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, the parties being of diverse citizenship and the amount in controversy exceeding \$10,000.00.

2. Defendant Clayton E. Woodrum is indebted to Plaintiff, for and on account of his personal guaranty of written agreements with Plaintiff in the following amounts:

A. On Plaintiff's First Claim for Relief judgment in the amount of \$20,587.38, interest at 17.5% per annum from October 30, 1985 through December 31, 1988, in the

amount of \$11,420.94, and \$9.87 per day thereafter;

B. On Plaintiff's Second Claim for Relief judgment in the amount of \$3,139.95, interest at 17.5% from November 30, 1985 through December 31, 1988, in the amount of \$1,695.28, and \$1.51 per day thereafter until paid;

C. On Plaintiff's Third Claim for Relief judgment in the amount of \$1,664.98, interest at the rate of 14.75% per annum from October 30, 1985 through December 31, 1988, in the amount of \$778.28 and \$.067 per day thereafter until paid;

D. On Plaintiff's Fourth Claim for Relief judgment in the amount of \$1,664.98, interest at 15.29% per annum from November 30, 1985 through December 31, 1988, in the amount of \$785.44 and \$0.70 per day thereafter until paid;

E. Costs and attorney's fees in the amount of \$5,411.47 fees and \$181.48 costs.

NOW, THEREFORE, having considered the judgment presented to this Court jointly by the Plaintiff and the Defendant, Clayton E. Woodrum, it is the finding, order, judgment and decree of this Court that judgment is hereby granted in favor of the Plaintiff and against the Defendant, Clayton E. Woodrum.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff be granted judgment against the Defendant, Clayton E. Woodrum, as follows:

A. On Plaintiff's First Claim for Relief judgment in the amount of \$20,587.38, interest at 17.5 % per annum from October 30, 1985 through December 31, 1988, in the amount of \$11,420.94, and \$9.87 per day thereafter until paid;

B. On Plaintiff's Second Claim for Relief judgment in the amount of \$3,139.95, interest at 17.5% per annum from November 30, 1985 through December 31, 1988 in the amount of \$1,695.28 and \$1.51 per day thereafter until paid;

C. On Plaintiff's Third Claim for Relief judgment in the amount of \$1,664.98, interest at the rate of 14.75% per annum from October 30, 1985 through December 31, 1988, in the amount of \$778.28, and \$0.67 per day thereafter until paid;

D. On Plaintiff's Fourth Claim for Relief judgment in the amount of \$1,664.98, interest at 15.29% per annum from November 30, 1985 through December 31, 1988, in the amount of \$785.44 and \$0.70 per day thereafter until paid;

E. Costs and attorney's fees in the amount of \$5,411.47 fees and \$181.48 costs.

DATED THIS 19<sup>th</sup> DAY OF January, 1989.

*W. Salebrook*  
Judge of the District Court

APPROVED AS TO FORM AND CONTENT:

*Todd Maxwell Henshaw*  
TODD MAXWELL HENSHAW,  
Attorney for Plaintiff

*James R. Gotwals*  
JAMES R. GOTWALS, 519 1085  
Attorney for Defendant  
Clayton E. Woodrum

*Clayton E. Woodrum*  
CLAYTON E. WOODRUM, Defendant

STATE OF OKLAHOMA     )  
                                      ) ss.  
COUNTY OF TULSA     )

Clayton E. Woodrum, of lawful age, after being first  
duly sworn upon oath, deposes and states:

That he is a Defendant in the above-captioned matter,  
that he has read the above and foregoing Judgment, knows the  
contents thereof and that the facts therein contained are  
true and correct to the best of his knowledge and belief.

*Clayton E. Woodrum*  
Clayton E. Woodrum

Subscribed and sworn to before me this 17 day of  
January, 1989.  
(SEAL)

*D. Melone*  
Notary Public

My Commission Expires: July 28, 1992

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 19 1989

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

WAYNE RICHISON d/b/a  
WAYNE RICHISON EQUIPMENT  
COMPANY,

Plaintiff,

vs.

TOKHEIM CORPORATION,

Defendant.

Case No. 85-C-623-B

ORDER OF DISMISSAL WITH PREJUDICE

On this 19<sup>th</sup> day of January, 19 89, upon written application of the parties for an order of dismissal with prejudice of the complaint, cross-claims and all other causes of action, the Court, having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the complaint and all cross-claims of the parties and have requested the Court to dismiss the complaint and cross-claims with prejudice to any future action, and the Court, being fully advised in the premises, finds that said complaint and cross-claims should be dismissed; it is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the complaint, cross-claims and all other causes of action of the Plaintiff and the Defendant filed herein one against the other be and the same are hereby dismissed with prejudice to any future action.

THOMAS R. BRETT

THOMAS R. BRETT, JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**JAN 19 1989**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

ROGER HIMSTREET and SHARON )  
HIMSTREET, formerly Husband and )  
Wife, )

Plaintiffs, )

vs. )

No. 88-C-225-B

CITY OF BARNSDALL, a munici- )  
pality within the State of )  
Oklahoma, and JESSE GARRETT, )  
an individual, )

Defendants. )

**ORDER SUSTAINING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

The Court has for decision the Defendants' Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56. The motion has been thoroughly briefed by the parties and the Court has held a hearing for oral presentations. For the reasons expressed below, the Defendants' Motion for Summary Judgment is sustained.<sup>1</sup>

<sup>1</sup>The Plaintiffs' response does not comply with local Rule 15(B) which states:

"[T]he brief in opposition to a motion for summary judgment (or partial summary judgment) shall begin with a section which contains a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute shall be numbered, shall refer with particularity to those portions of the record upon which the opposing party relies, and, if applicable, shall state the number of the movant's fact that is disputed. All material facts set forth in the statement of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party...."

In Plaintiffs' Response Brief of December 22, 1988, there is a section captioned "Uncontroverted Facts." The motion for summary judgment is not ultimately sustained because of Plaintiffs' failure to comply with Rule 15(B) but is sustained on the merits of the



Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Where there is an absence of material issues of fact, then the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.E.2d 202 (1986); Widon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986); Commercial Iron & Metal Co. v. Bache & Co., Inc., 478 F.2d 39, 41 (10th Cir. 1973); and Ando v. Great Western Sugar Company, 475 F.2d 531, 535 (10th Cir. 1973).

The Plaintiffs filed their application to file an amended petition with copy attached on February 2, 1988. An order was entered granting same by the state court on February 23, 1988, and then on June 23, 1988, following removal to this Court, the Plaintiffs filed their Amended Complaint after removal.

The Plaintiff Roger Himstreet, in his Amended Complaint after removal, alleges that he suffered a cardiovascular stroke on May 19, 1986 while driving an automobile in the City of Barnsdall, Oklahoma. A vehicle accident ensued and Plaintiff alleges that he was without cause arrested for driving under the influence of intoxicants, placed in the Barnsdall jail, and denied proper medical treatment over a period of time of approximately two or

---

record before the Court as herein explained.

three hours. The delay exacerbated his condition, prolonging recovery and increasing disability. Plaintiff alleges violations under the Oklahoma Political Subdivision Tort Claims Act, 51 Okla.Stat. §151 *et seq.* and federal constitutional violations under 42 U.S.C. §1983. The Plaintiff, Sharon Himstreet, formerly the wife of Roger Himstreet, pleads an action for alleged loss of consortium.

Previously Plaintiffs' counsel conceded that there was no right of loss of consortium under §1983 and now the Court hereby concludes no loss of consortium claim exists under the Oklahoma tort claims procedure as provided in 51 Okla.Stat. §152(4)(b). Therefore, the motion for summary judgment of the Defendants concerning the loss of consortium claim of Sharon Himstreet is hereby sustained and such claim is dismissed.

Concerning the Defendant Garrett's request to dismiss the action because of Fed.R.Civ.P. 4(j), such rule states the following:

"Summons: Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This subdivision shall not apply to service in a foreign country pursuant to subdivision (i) of this rule."

The Plaintiff in this case filed an application before the State court on February 1, 1988 to file an amended petition naming

Jesse Garrett. By way of the State court's order of February 23, 1988, approval was granted to file the amended complaint which was attached to the application filed on February 1, 1988. While no filing stamp appears on the amended petition, it was attached to and did accompany the filing of the application, so the Court concludes the February 23, 1988 state court order permitting it to be filed would constitute the commencement of the action against the Defendant Jesse Garrett. After the case was removed to this court Plaintiff again filed an amended complaint on June 23, 1988. Service was ultimately obtained on June 29, 1988 upon the Defendant Jesse Garrett, thus service was not obtained within 120 days from the filing of the original amended complaint on February 23, 1988. Plaintiff's explanation for not obtaining service upon the Defendant Garrett within the 120-day period was that he was aware the action would be removed to the federal court and he deferred obtaining personal service upon Garrett until following the removal and the filing of the amended complaint before this court. The Court concludes, pursuant to Fed.R.Civ.P. 4(j), that such is good cause why service was not made within the 120-day period.

Concerning the pendent claim against the Defendant Police Chief Jesse Garrett under the Oklahoma Governmental Tort Claims procedure, 51 Okla.Stat. §151 *et seq.*, the motion for summary judgment is also sustained because under 51 Okla.Stat. §163 employees acting within the scope of their employment cannot be named as defendants under the Oklahoma Tort Claims Act. The record before the Court

indicates that Police Chief Garrett was acting within the scope of his employment at the time of the alleged acts in the Amended Complaint so no such cause of action under the Oklahoma Tort Claims Act is permitted against the Defendant Garrett.

Concerning the Plaintiff Roger Himstreet's complaint against the City of Barnsdall, it appears as though the notice and time limits provided for in 51 Okla.Stat. §156 for the commencing of such an action against the city has been complied with and alleged. Wilbourn v. City of Tulsa, 721 P.2d 803, 805 (1986). However, the Defendant City of Barnsdall urges that no such action under the Oklahoma tort claims procedure can be pursued against it because the facts involved herein implicate exemptions No. 4, 5, 6 and 23 set forth in 51 Okla.Stat. §155.<sup>2</sup> 51 Okla.Stat. §155 and the exemptions asserted state:

"§155. Exemption from liability

The state or a political subdivision shall not be liable if a loss or claim results from:

\* \* \*

4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any statute, charter provision, ordinance,

---

<sup>2</sup>The Court did make the statement in its Order of December 7, 1988 that Plaintiffs' claim pursuant to the Oklahoma Governmental Tort Claims Act, 51 O.S. §151 *et seq.* against Defendants Williams and Osage County was deficient because of the Act §155 exemptions 4, 5, 6 and 23. Upon reflection the Court concludes that it was incorrect in this regard. However, Plaintiffs' claims against Williams and Osage County were deficient regarding the Oklahoma Governmental Tort Claims Act for the other reasons expressed in the Court's Order of December 7, 1988.

resolution, rule, regulation or written policy;

5. Performance of or the failure to exercise or perform any act or service which is in the discretion of the state or political subdivision or its employees;

6. Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection;

\* \* \*

23. Provision, equipping, operation or maintenance of any prison, jail or correctional facility, or injuries resulting from the parole or escape of a prisoner by a prisoner to any other prisoner; provided, however, this provision shall not apply to claims from individuals not in custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections; \* \* \*."

It should be first noted that there is a dearth of authority interpreting the above various exemptions. The Court does not conclude that Exemption 4 above is applicable because Plaintiff's claim does not involve the adoption or enforcement of or failure to adopt or enforce a law, statute, charter provision, ordinance, resolution, rule, regulation or written policy. The Court concludes that Exemption 5 is not applicable to the facts herein because the providing of needed medical attention to one in custody is not a matter of discretion of a political subdivision or its employees. Exemption 6 is inapplicable because the factual allegations herein do not involve the failure to provide, or the method of providing police or law enforcement protection. While the term "method" of providing police protection might be

interpreted broadly enough to include any act done by a police officer within the scope of his employment, the Court does not conclude that such was the intent of the legislature. The Court concludes the legislative intent, in reference to the "method" of providing police protection relates generally to the quality or quantity of police protection and not the alleged breach of duty of a particular police officer in the conduct of a specific arrest and confinement. Further, the Court concludes that Exemption 23 above is inapplicable because the loss or claim herein did not result from "provision, equipping, operation or maintenance of any prison, jail or correctional facility ...". The alleged loss resulted from the negligence of Police Chief Garrett in failing to discern that Plaintiff's physical signs and symptoms were a genuine illness as opposed to self-induced intoxication. While Police Chief Garrett had placed the Plaintiff in confinement in the Barnsdall jail, the loss or claim of Plaintiff is not reasonably related to the provision, equipping, operation or maintenance of the jail.

The Political Subdivision Tort Claims Act, 51 Okla.Stat. §151 *et seq.* is the exclusive remedy by which an injured plaintiff may recover against a governmental entity for its negligence, abrogating any previously existing common law right. Fuller v. Odom, 741 P.2d 449 (Okla. 1987). 51 Okla.Stat. §154 provides a limit of liability of \$100,000 and excludes any award of punitive damages. A common issue of causation exists in both the Oklahoma

Political Subdivision Tort Claims Act and the 42 U.S.C. §1983 claim which will be discussed hereafter.

Next, the Court will consider the Defendant City of Barnsdall's motion for summary judgment in reference to Plaintiff's alleged constitutional violations under 42 U.S.C. §1983. In Monell v. New York City Department of Social Services, 436 U.S. 658, 690 (1978), the court stated that §1983 authorizes a claim for constitutional deprivations resulting from governmental custom or policy even though it has not received formal approval through the municipality's official decision-making channels. Since governmental bodies act only through natural persons, the court concluded that such governments should be held responsible when, and only when, their official policies cause their employees to violate another person's constitutional rights. The rationale is that municipalities may be held liable under §1983 only for acts for which the municipality itself is actually responsible by officially sanctioning or condoning the conduct.

As an extension of Monell, in Pembaur v. Cincinnati, 475 U.S. 469 (1986), the court laid down the principal that municipal officials who have "final policy making authority" may by their actions subject the government to §1983 liability. Whether a particular official has "final policy making authority" is a question of state law. In Pembaur the court also said that the challenged action must have been taken pursuant to a policy adopted by the official or officials responsible under the state law for

making policy in that area of the city's business. *See also, City of St. Louis v. Praprotnik*, 108 S.Ct. 915 (1988).

An issue presented is whether Plaintiff has sufficiently alleged constitutional deprivation by Police Chief Garrett because he was carrying out policy or custom of the City of Barnsdall. Plaintiff's complaint makes no specific allegations that Police Chief Garrett was carrying out policy and custom of the City of Barnsdall but it does allege in Paragraphs XV and XVI on page 5 that Police Chief Garrett is the administrative head of the police department of the City of Barnsdall and the City of Barnsdall had failed to provide proper training to its officers and police chief. The Court concludes these allegations are marginally sufficient to allege a §1983 action against the City of Barnsdall. It is not clear from the record that Police Chief Garrett is a city policy maker.

Another critical issue that bears discussion is whether Police Chief Garrett's denial of medical treatment would be characterized as negligence or a "deliberate indifference to serious medical needs." The former would not give rise to a claim under §1983, *Smart v. Villar*, 547 F.2d 112 (10th Cir. 1976), but the latter would give rise to such a claim. *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 292, 50 L.Ed.2d 251, 261 (1976). In *Dewell v. Lawson*, 489 F.2d 877, 882 (10th Cir. 1974), the court stated that in order to state a claim under §1983 the plaintiff must allege and prove exceptional circumstances and conduct so grossly incompetent,



inadequate, or excessive so as to shock the conscience or to be intolerable to basic fairness. In Wise v. Bravo, 662 F.2d 1328, 1333 (10th Cir. 1983), concerning a §1983 claim the court stated:

"It is only if the misuse of legal procedure is so egregious as to subject the aggrieved individual to a deprivation of constitutional dimensions, and the tortfeasor is acting under color of state law, that §1983 may be employed."

In Martinez v. California, 444 U.S. 277, 285, 100 S.Ct. 553, 559, 62 L.Ed.2d 481 (1980), *reh'g denied*, 455 U.S. 920, 100 S.Ct. 1285, 63 L.Ed.2d 606 (1980), the court points out that although §1983 gives rise to a species of tort liability, not all injury proximately caused by a government employee is actionable under the statute. *See also, Hewitt v. City of Truth or Consequences*, 758 F.2d 1375, 1380, fn. 5 (10th Cir. 1985).

The Court is not prepared to conclude as a matter of law on this record that Police Chief Garrett's conduct could only be characterized as negligence as opposed to "deliberate indifference to serious medical needs."

The record reveals that Defendants' motion for summary judgment is well taken regarding the issue of causation. There is no probative evidence in the record that Plaintiff's physical condition requiring medical treatment resulted from any injury other than the stroke (cerebral vascular accident). There is no medical evidence Plaintiff's injury was caused in part by either the automobile accident or the alleged dropping incident. (Tribbey Depo. pp. 70-71). Neither could the alleged verbal abuse be

considered of constitutional dimension. The essence of Plaintiff's claim is that his arrest and being taken into custody without just cause resulted in a delay of his treatment for the cerebral cardiovascular accident (stroke) for about two hours, producing further injury. However, under Celotex Corp. v. Catrett, supra, no issue of fact remains herein concerning the issue of causation.

The record before the Court includes the deposition of a qualified medical physician, Dr. Michael A. Tribbey. In his deposition testimony Dr. Tribbey concludes that the delay did not contribute to a worsening of the Plaintiff's condition and even had he been treated earlier the "ultimate outcome would most likely have been the same." (Tribbey Depo. pp. 68, 53). He further stated that he thought there was only a remote chance that the Plaintiff would have improved through earlier treatment. In an effort to create a fact question relative to causation, the Plaintiff attaches a medical report dated May 19, 1987 from medical physician Dr. Steven Langarten. Therein Dr. Langarten states, "There is a reasonable possibility that substantial delay in the initiation of therapy in the course of a 'stroke in evolution' could have contributed to the extensive progression of this stroke." The Court notes the written letter opinion submitted of Dr. Langarten is not under oath as required by Fed.R.Civ.P. 56. Plaintiff's counsel, Thomas S. Evans, attempts to cure this defect by attaching his affidavit stating that the letter is the true and correct letter of Dr. Steven Langarten. Attorney Evans could affirm by affidavit that the letter is that of Dr. Langarten but attorney


Evans is not qualified, by either professional qualification or by the Rules of Evidence, to state under oath that the conclusions reached by Dr. Langarten are true and correct. Therefore, standards relative to consideration of a motion for summary judgment pursuant to Fed.R.Civ.P. 56 preclude the Court from considering the written unsworn letter report of Dr. Langarten. Further, Dr. Langarten's letter report speaks in terms of "reasonable possibility" when the standard is one of reasonable probability. Commercial Standard Insurance Company v. Feaster, 259 F.2d 210 (10th Cir. 1958); Franklin v. Skelly Oil Co., 141 F.2d 568 (10th Cir. 1944), 153 A.L.R. 156; Fruehauf Trailer Co. v. Gilmore, 167 F.2d 324 (10th Cir. 1948); Bearman v. Prudential Insurance Company of America, 186 F.2d 662 (10th Cir. 1951). See also, Mount Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 287, 97 S.Ct. 568, 576, 50 L.Ed.2d 471 (1977), and Anderson v. City of New York, 611 F.Supp. 41 (D.C. 1985). Thus, as required by Celotex Corp. v. Catrett, *supra*, Plaintiff has produced no probative evidence in the record before the Court establishing that there is a factual dispute based upon a reasonable medical probability or that it is more likely than not that the approximately two-hour delay in obtaining medical treatment for the Plaintiff prolonged his recovery or increased disability.

Plaintiff cites McKellips v. St Francis Hospital, Inc., 741 P.2d 467 (Okla. 1987) which adopted the loss of chance of recovery or survival doctrine of Restatement (Second) of Torts §323 (1965).

The court noted at 741 P.2d 475 that the loss of chance doctrine was applicable only in alleged medical malpractice situations and it did not change traditional principles of causation in tort cases generally.

For the reasons expressed above, the Motion for Summary Judgment of Defendants Jesse Garrett and the City of Barnsdall to the claims of the Plaintiffs is hereby sustained. A separate Judgment in keeping with the Court's ruling is filed contemporaneously herewith.

DATED this 19<sup>th</sup> day of January, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

TOMMY REDMON,

Plaintiff,

v.

WILLIAM J. HARRIS, et al,

Defendants.

JAN 19 1989

88-C-398-E

Jack C. Silver, Clerk  
U.S. DISTRICT COURT


ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed December 9, 1988, in which the Magistrate recommended that defendants' Motions to Dismiss be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that defendants' Motions to Dismiss plaintiff's civil rights complaint pursuant to 42 U.S.C. §1983 is granted under 28 U.S.C. §1915(a).

Dated this 19<sup>th</sup> day of January, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FRANK H. MAHAN,  
Plaintiff,

v.

UNITED STATES OF AMERICA,  
Defendant.

v.

W. E. ROWSEY, III, and WILLIAM  
G. PATTERSON,  
Additional  
Defendants on  
Counterclaim.

No. 87-C-629-B

**FILED**

**JAN 19 1989**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

ORDER EXTENDING ADMINISTRATIVE  
CLOSING ORDER

On the representations from counsel for all parties that a settlement and compromise has been reached in the above-named, case, it is ordered that the Clerk extend for an additional ninety (90) days to the date of April 1, 1989, the Administrative Closing Order previously entered herein.

Signed this 19 day of January, 1989.

  
U.S. DISTRICT JUDGE

**FILED**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 86-C-1062-E

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the action be dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigations is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

ORDERED this 17<sup>th</sup> day of January, 1989.

JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 18 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

W. F. MARTIN, an individual, )

Plaintiff, )

vs. )

No. 87-C-244-B

STEPHEN C. SIMS, an individual, )  
and FEDERAL DEPOSIT INSURANCE )  
CORPORATION, as Receiver for )  
FIRST NATIONAL BANK OF SAPULPA, )  
a national banking association, )

Defendants. )

ORDER OVERRULING DEFENDANTS' MOTION FOR  
JUDGMENT NOTWITHSTANDING THE VERDICT AND  
IN THE ALTERNATIVE MOTION FOR NEW TRIAL

This matter comes before the Court upon Defendants' Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial based upon an Amended Judgment entered on January 3, 1989. This Court entered an Order on January 6, 1989, overruling Defendants' original motion for a judgment notwithstanding the verdict based upon the original Judgment. This Court hereby affirms its Order entered January 6, 1989, and adopts the reasons set forth therein. Therefore, Defendants' subsequent Motion for Judgment Notwithstanding the Verdict or in the Alternative for New Trial is OVERRULED.

IT IS SO ORDERED this 18<sup>th</sup> day of January, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

JAN 18 1989

OXY CITIES SERVICE NGL INC., )

Plaintiff, )

vs. )

EL PASO NATURAL GAS COMPANY, )

Defendant. )

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 87-C-175-E

**ORDER**

Upon the Motion of the Plaintiff, on this 17<sup>th</sup> day of January,  
1989, this action is ordered dismissed with prejudice.

*at 3:00 p.m. January 18, 1989*

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U. S. DISTRICT JUDGE

**FILED**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 87-C-903-E

Plaintiff is granted judgment against the Defendant in that the 1987 Agreement never came into effect and Plaintiff owes no facility fee to Defendant. Plaintiff is granted its costs of this action.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 18 1989 K

WAKE WALKINGSTICK,

Plaintiff,

vs.

BURLINGTON NORTHERN RAILROAD  
COMPANY,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 88-C-537-E ✓

JOURNAL ENTRY OF JUDGMENT

This case was filed on June 9, 1988, alleging a cause of action under the Federal Employers' Liability Act for personal injury sustained during the course of the plaintiff's employment by the defendant. On August 10, 1988, the defendant moved for summary judgment based upon the language of a release which the plaintiff had executed as part of the settlement of a prior suit against the defendant for alleged violations of the Railway Labor Act. On December 5, 1988, the Court granted the defendant's motion for summary judgment. Therefore, it is the order of this Court that judgment shall be entered in favor of the defendant and against the plaintiff as to all claims asserted in this case.

SO ORDERED this 17<sup>th</sup> day of January, 1988.

James O. Ellison  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

Approved as to form:

James G. [Signature]  
Attorney for the Plaintiff

Dennis S. Boxer  
Attorney for the Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 18 1989

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

McLENNAN DRILLING CO., INC., )

Plaintiff, )

vs. )

No. 87-C-308-C ✓

BARBEE EXPLORATION; and, )

BILL J. BARBEE, d/b/a )

BARBEE EXPLORATION, )

Defendants. )

ORDER

Now before the Court for its consideration is the objection of the defendants to the Report and Recommendation of the United States Magistrate, the latter filed on July 26, 1988.

This is an action for declaratory judgment in which plaintiff sought to require defendants to indemnify plaintiff for a pending state court action. Both parties moved for summary judgment, and a judgment was entered in favor of plaintiff on March 29, 1988.

On April 4, 1988, plaintiff filed a motion to tax costs and attorney fees against the defendants. Plaintiff sought a total of \$6,245.56 regarding the state court action and a total of \$7,337.77 regarding the present action. After hearing, the Magistrate recommended that both amounts be granted. Defendants have objected only as to the award of attorney fees in the federal action.

Defendants place principal reliance upon Maidmore Realty Co., Inc. v. Maidmore Realty Co., Inc., 474 F.2d 840, 843 (3rd Cir.

1973), wherein the court stated:

Claims for attorney fees are items of special damage which must be specifically pleaded under Federal Rule of Civil Procedure 9(g). In the absence of allegations that the pleader is entitled to attorney's fees, therefore, such fees cannot be awarded.

However, in that case the court affirmed an award of reasonable attorney fees, which was requested in the cross-complaint. The court found that, after the judgment, the movant was seeking "more than reasonable attorney fees for the suit at bar." Id. at 841. (emphasis added). The movant sought fees in connection with services not connected with the litigation. Id. at 842. Thus, the request which was denied actually sought attorney fees as damages, rather than in connection with the pending litigation. Similarly, in Western Cas. and Surety Co. v. Southwestern Bell Tele. Co., 396 F.2d 351 (8th Cir. 1968), the court denied a request for fees under the "Missouri Vexatious Delay Statute", which provided for fees only if it was found that an insurance company had vexatiously refused to pay a loss. The court noted that the complaint did not allege vexatious delay. Id. at 356. Thus, there was no support for the claim.<sup>1</sup>

Here, by contrast, ¶5.4 of the contract between the parties clearly provides for the recovery of attorney fees on an action such as this. It is true that in the Complaint in this action, plaintiff did not specifically request attorney fees. However, in its motion for summary judgment, filed on December 18, 1987, it did so request. In their response to that motion, defendants did not

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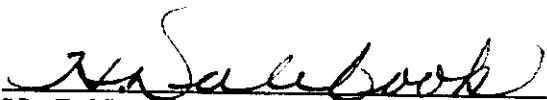
<sup>1</sup>This issue of Rule 9(g) was not addressed by the Magistrate in the case at bar, but was raised by the defendants in a supplemental brief filed after entry of the Report and Recommendation.

raise objection to an award of attorney fees, if defendants were found liable. Thus, under Rule 15(b) F.R.Cv.P., the issue may be treated as if raised by the pleadings.

On the general issue raised here, it has been stated that "attorney's fees have been held to be items of special damage in some contexts." 5 C.Wright & A.Miller, Federal Practice and Procedure, §1310 at 444 (1969) (footnote omitted) (emphasis added). Clearly then, this is not the general rule. The Court believes that the amount awarded was properly awarded.

It is the Order of the Court that the Report and Recommendation of the United States Magistrate is hereby affirmed. The motion of the plaintiff to tax costs and attorney fees is hereby granted in the total amount of \$13,583.33, this representing \$6,245.56 for the state court action and \$7,337.77 for the federal court action.<sup>2</sup>

IT IS SO ORDERED this 17<sup>th</sup> day of January, 1989.

  
H. DALE COOK  
Chief Judge, U. S. District Court

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<sup>2</sup>The latter amount includes \$134.77 in court costs previously awarded.

FILED

JAN 18 1989

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CHARLES F. BOYER, MARY BOYER and GARY MAY, )

Plaintiffs, )

v. )

No. 88-C-0011-E

JANOUSH TOWING, INC., )

Defendant and )  
Third-Party Plaintiff, )

v. )

DIXIE INDUSTRIES, INC., )

Third-Party Defendant.)

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 17<sup>th</sup> day of Jan, 1988, it appearing to the Court that this matter has been compromised and settled, and Plaintiffs' Complaint against Defendant/Third-Party Plaintiff is herewith dismissed with prejudice to the refiling of a future action.

  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ROBERT L. PRICE,

Plaintiff,

v.

WILLIAM THOMAS, et al,

Defendants.

88-C-528-B


11-18-88

ORDER

The court now has before it plaintiff's civil rights complaint pursuant to 42 U.S.C. §1983. On October 13, 1988 an Order was entered dismissing plaintiff's complaint against defendants William M. Thomas and Charles A. Ramsey for failure of plaintiff to respond to defendants' Motions to Dismiss.

The court file shows no service of process upon defendant Lee Ward, County Deputy, Mayes County. Mailings to plaintiff's last known address have been returned. The plaintiff having failed to keep the court notified of his whereabouts or to obtain service upon defendant Ward, it is ordered that this case be dismissed against defendant Ward for failure of plaintiff to prosecute.

Dated this 18<sup>th</sup> day of November, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 18 1989

CARL WAYNE SISCO,

Plaintiff,

vs.

BILL HALL, et al.,

Defendants.

WACK C. SILVER, CLERK  
U.S. DISTRICT COURT

No. 88-C-15-C  
No. 88-C-125-C  
Consolidated

ORDER

For the second time, the plaintiff has failed to appear at a status and scheduling conference in this case. On the most recent occasion, the notice of the conference was returned, indicating that the plaintiff had moved and left no forwarding address. Under Rule 41(b) F.R.C.P., the Court possesses the authority to dismiss an action for lack of prosecution. Under these circumstances, the Court has decided to exercise that authority.

It is the Order of the Court that the above-styled and numbered case is hereby DISMISSED.

IT IS SO ORDERED this 18<sup>th</sup> day of January, 1989.

  
H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
JAN 18 1989

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

CARL WAYNE SISCO,

Plaintiff,

vs.

BILL HALL, et al.,

Defendants.

No. 88-C-15-C

No. 88-C-125-C

Consolidated

ORDER

For the second time, the plaintiff has failed to appear at a status and scheduling conference in this case. On the most recent occasion, the notice of the conference was returned, indicating that the plaintiff had moved and left no forwarding address. Under Rule 41(b) F.R.C.P., the Court possesses the authority to dismiss an action for lack of prosecution. Under these circumstances, the Court has decided to exercise that authority.

It is the Order of the Court that the above-styled and numbered case is hereby DISMISSED.

IT IS SO ORDERED this 18<sup>th</sup> day of January, 1989.

  
H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE FARM MUTUAL AUTOMOBILE, )  
INSURANCE COMPANY, an )  
Illinois corporation, )

Plaintiff, )

vs. )

GREYHOUND LINES, INC., a )  
California corporation; )  
et al., )

Defendants. )

No. 88-C-280B

STIPULATION ~~FOR~~ DISMISSAL WITH PREJUDICE

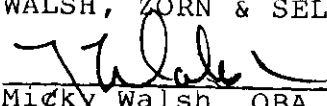
COME NOW the parties, State Farm Mutual Automobile Insurance Company, Mid-America Preferred Insurance Company, and James Toliver, and would state to the Court that Mid-America has settled the uninsured motorist portion of this case with their insured, James Toliver.

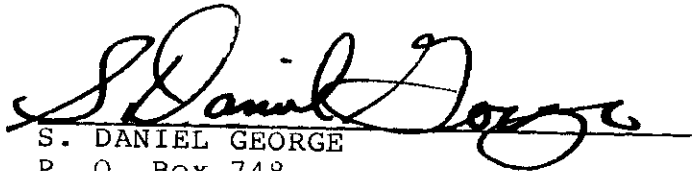
Accordingly, the defendant Mid-America Preferred Insurance Company, asks that they be dismissed with prejudice from the above-styled suit.

The defendant Toliver, was the only claimant to the Mid-America Preferred Insurance Company's policy.

WHEREFORE, by reason of settlement, Mid-America Preferred Insurance Company should be dismissed from this action with prejudice.

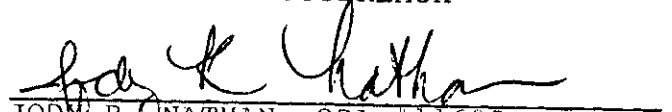
WALSH, ZORN & SELF, INC.

  
Micky Walsh OBA No. 9327  
Journal Record Building  
621 North Robinson, Suite 420  
Oklahoma City, Oklahoma 73102  
(405) 239-6100  
ATTORNEY FOR DEFENDANT,  
Mid-America Preferred Insurance Co.



S. DANIEL GEORGE  
P. O. Box 748  
1015 East Redwood  
Salisaw, Oklahoma 74955  
ATTORNEY FOR DEFENDANT,  
James Toliver

THOMAS, GLASS, ATKINSON, HASKINS,  
NELLIS & BOUDREAUX



JODY R. NATHAN, OBA #11685  
525 South Main, Suite 1500  
Tulsa, Oklahoma 74103  
(918) 582-8877

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 17 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

KATHY BARRINGER, Administratrix  
of the Estate of Joe Barringer,  
deceased,

Plaintiff,

vs.

No. 87-C-1015B

WAL-MART STORES, INC. and  
ACTION PRODUCTS COMPANY,

Defendants.

**ORDER OF DISMISSAL OF WAL-MART STORES, INC.'S  
CROSS CLAIM AGAINST ACTION PRODUCTS COMPANY**

Pursuant to the Joint Stipulation of Dismissal With Prejudice  
filed by the defendants, this Court hereby dismisses with  
prejudice Wal-Mart Stores, Inc.'s Cross Claim against Action  
Products Company.

Dated this 17<sup>th</sup> day of January, 1989.

  
THOMAS R. BRETT, Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 17 1987

CLERK  
U.S. DISTRICT COURT

UNITED STATES FIRE INSURANCE  
COMPANY, a foreign corporation,  
and THE NORTH RIVER INSURANCE  
COMPANY, a foreign corporation,

Appellants,

vs.

Case No. 86-111-E

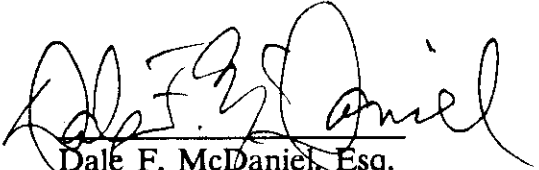
GENERAL ELECTRIC COMPANY,  
a corporation, W.M. SMITH  
ELECTRIC COMPANY OF OKLAHOMA,  
INC., an Oklahoma corporation,  
W.M. SMITH ELECTRIC COMPANY,  
a Texas corporation, POWER  
ELECTRIC COMPANY, INC., a  
Mississippi corporation, CARL  
PONS ELECTRIC MOTOR SERVICE,  
INC., a Texas corporation,  
ALLEN M. GRAYSON, JR., ALLEN  
M. GRAYSON, III, LYNN  
WHITEFIELD, and TERRY RHINE,

Defendants.

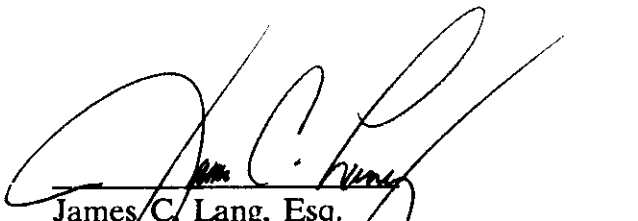
JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

The plaintiffs, United States Fire Insurance Company and the North River Insurance Company, and the defendants, General Electric Company, W.M. Smith Electric Company of Oklahoma, Inc., Power Electric Company, Inc., Carl Pons Electric Motor Service, Inc., Allen M. Grayson, Jr., Allen M. Grayson, III, Lynn Whitefield, and Terry Rhine, pursuant to FED. R. Civ. P. 41(a)(1)(ii) stipulate that all claims for relief asserted

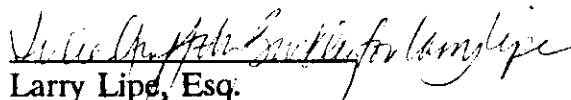
by plaintiff and defendants in the captioned matter be dismissed, with prejudice to refiling,  
with all parties to bear their own respective costs and attorneys fees.

  
Dale F. McDaniel, Esq.  
McDANIEL AND ASSOCIATES  
Suite 200  
Kensington Tower  
2250 E. 73rd St.  
Tulsa, OK 74136

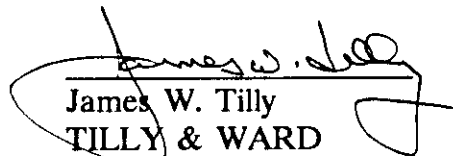
**Attorneys for U.S. Fire  
Insurance Company and the  
North River Insurance Company**

  
James C. Lang, Esq.  
SNEED, LANG, ADAMS, HAMILTON,  
DOWNIE & BARNETT  
114 E. 8th, 6th Floor  
Tulsa, OK 74119


**Attorneys for Lynn Whitefield**

  
Larry Lipe, Esq.  
COMFORT, LIPE & GREEN, P.C.  
2100 Mid-Continent Tower  
401 South Boston Avenue  
Tulsa, OK 74103

**Attorneys for W.M. Smith Electric Company  
of Oklahoma, Inc., Allen M. Grayson, III,  
Allen M. Grayson, Jr., Power Electric Company, Inc.,  
and Carl Pons Electric Motor Service, Inc.**

  
James W. Tilly  
TILLY & WARD  
1412 S. Boston, Suite 715  
Tulsa, Oklahoma 74119

**Attorneys for General Electric Company**

  
Bob Redemann, Esq.  
RHODES, HIERONYMOUS, JONES  
TUCKER & GABLE  
2800 Fourth National Bldg.  
Tulsa, OK 74119

**Attorneys for Terry Rhine**

**FILED**

IN THE UNITED STATES DISTRICT COURT FOR THE **JAN 17 1989**  
NORTHERN DISTRICT OF OKLAHOMA

DAVID T. RAMOS,

Plaintiff,

v.

RON CHAMPION, et al,

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

88-C-514-E

ORDER

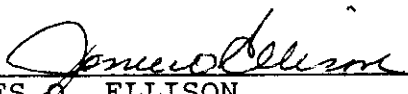
Now before the court is defendants' Motion to Dismiss plaintiff's civil rights complaint. Although plaintiff failed to respond to defendants' motion in a timely manner as required by the Federal Rules of Civil Procedure and the Local Rules of the Northern District of Oklahoma, on November 9, 1988, the court, sua sponte, gave plaintiff an extension of time in which to respond to this motion. However, no such response was ever filed by plaintiff.

As the court previously advised plaintiff, all litigants, including those appearing pro se, are obligated to follow the procedural rules of court. See, Joplin v. Southwestern Bell Telephone Co., 671 F.2d 1274 (10th Cir. 1982). Plaintiff having been given every opportunity to comply with the pleading requirements of this court, the court concludes that plaintiff's failure to respond to the pending motion constitutes a waiver of objection to the motion. Rule 15A of the Local Rules for the Northern District of Oklahoma.



It is, therefore, ordered that defendants' Motion to Dismiss is granted, and plaintiff's civil rights complaint pursuant to 42 U.S.C. §1983 is hereby dismissed.

Dated this 13<sup>th</sup> day of December, 1988.

  
\_\_\_\_\_  
JAMES S. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT **FILED**  
FOR THE NORTHERN DISTRICT OF OKLAHOMA **JAN 17 1989**

CLEAR CHANNEL COMMUNICATIONS, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
UNIVERSITY MANSION OF TULSA COMPANY, )  
 )  
Defendant. )

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

NO. 88-C-523-E

ORDER

Now, on this 13<sup>th</sup> day of January, 1989, the parties' joint application for dismissal with prejudice comes on for hearing before the undersigned judge. After reviewing said application, the Court finds that said application should be granted in its entirety.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that all causes of action of Plaintiff and Defendant are hereby dismissed with prejudice to the refiling of the same, each party to bear its own attorney fees and costs.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JIMMY LEON MOSS; DAPHNE A.  
MOSS; JEWEL ROSS; MARY LEE  
ROSS a/k/a MARY LEE WILSON  
ROBINSON; JOHN DOE, Tenant;  
FIDELITY FINANCIAL SERVICES,  
INC.; COUNTY TREASURER, Tulsa  
County, Oklahoma; and BOARD OF  
COUNTY COMMISSIONERS, Tulsa  
County, Oklahoma,

Defendants,

vs.

CLARENCE ROBINSON,

Additional Party Defendant.

**F I L E D**

**JAN 17 1989**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 87-C-1028-E

ORDER VACATING JUDGMENT OF FORECLOSURE,  
RESTORING NOTE AND MORTGAGE AND  
DISMISSAL WITHOUT PREJUDICE

This matter comes on before the Court on this 13<sup>th</sup> day  
of January, 1989, upon the Motion of the Plaintiff,  
United States of America, for an Order of this Court vacating the  
Judgment of Foreclosure entered in this case on November 29,  
1988, and restoring the note and mortgage sued upon in  
Plaintiff's Complaint and dismissing this action without  
prejudice. The Court, having considered the motion and the  
records and files in this case, and being fully advised in the  
premises, finds that good cause has been shown for the relief  
sought and that the motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Judgment of Foreclosure entered in this case on November 29, 1988, be, and the same is hereby vacated, set aside and held for naught.

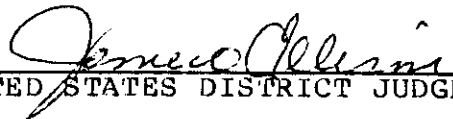
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the note and mortgage sued upon in Plaintiff's Complaint and attached thereto as Exhibits "A" and "B", respectively, and more particularly described as follows, to-wit:

A note and mortgage executed by Defendants, Jimmy Leon Moss and Daphne A. Moss, to the United States of America, acting through the Administrator of Veterans Affairs, dated March 20, 1964, for the original principal amount of \$10,500.00, said mortgage being filed for record in the office of the County Clerk of Tulsa County, Oklahoma, on March 20, 1964, in Book 3432, Page 671, and covering the following described real estate situated in Tulsa County, Oklahoma, to-wit:

Lot Eight (8), Block Sixty-one (61), VALLEY VIEW ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

be, and such note and mortgage are hereby completely restored as a valid and subsisting note and mortgage and ordered redelivered to Plaintiff, United States of America, as the owner and holder thereof, and with full force and effect, the same as though said judgment and cancellation had never been adjudged and entered.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this action be, and the same is hereby dismissed without prejudice.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 17 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

COMMERCE BANK OF KANSAS )  
CITY, N.A., )

Plaintiff, )

vs. )

Case No. 88 C 1235E

JAMES D. NELSON, )

Defendant. )

JOURNAL ENTRY OF JUDGMENT

NOW on this 13<sup>th</sup> day of January, 1989, the above cause comes on for hearing. Plaintiff appears by its attorneys Patton, Brown by Jack L. Brown. Defendant James D. Nelson appears by his attorney Blackstock, Joyce, Pollard & Montgomery by Brian J. Rayment.

Having been advised that Plaintiff and Defendant agree and stipulate to the facts and requested relief set forth in Plaintiff's Complaint, the Court finds:

1. Plaintiff is a nationally chartered bank with its offices and principal place of business located in Kansas City, Missouri.

2. Defendant is an individual residing in Tulsa, Oklahoma.

3. Diverse citizenship exists between Plaintiff and Defendant and the matter in controversy exceeds the sum of \$10,000.00, exclusive of interest and costs. Jurisdiction is conferred in this Court under 28 U.S.C. §1332.

4. Venue is appropriate in this Court pursuant to 28 U.S.C. §1391.

5. On December 6, 1986, Defendant executed and delivered to Plaintiff his promissory note in the original principal amount of \$20,000.00 with interest at Plaintiff's prime rate plus 1 percent floating (Promissory Note 1).

6. On or about June 6, 1987, Defendant defaulted on Promissory Note 1.

7. There is due and owing on Promissory Note 1 from Defendant to Plaintiff the principal amount of \$20,000.00 plus accrued interest thereon from November 1, 1987 through December 31, 1988 in the amount of \$2,574.81 and interest accruing on the principal amount from January 1, 1989 at the rate of 11 percent per annum or \$6.03 per diem until paid.

8. Plaintiff is also entitled to recover its attorney fees pursuant to Oklahoma law.

9. On December 24, 1986, Defendant executed and delivered to Plaintiff his promissory note in the original principal amount of \$50,000.00 with interest at Plaintiff's prime rate plus 1 percent floating (Promissory Note 2).

10. On or about June 24, 1987, Defendant defaulted on Promissory Note 2.

11. There is due and owing on Promissory Note 2 from Defendant to Plaintiff the principal amount of \$50,000.00 plus accrued interest thereon from November 1, 1987 through December 31, 1988 in the amount of \$6,434.89 and interest accruing on the principal amount from January 1, 1989 at the rate of 11 percent per annum or \$15.07 per diem until paid.

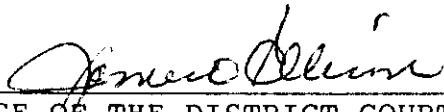
12. Plaintiff is also entitled to recover its attorney fees pursuant to Oklahoma law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff Commerce Bank of Kansas City, N.A. is granted Judgment against Defendant James D. Nelson as follows:


A. In the principal amount of \$20,000.00 plus accrued interest thereon from November 1, 1987 through December 31, 1988 in the amount of \$2,574.81 and interest accruing on the principal amount from January 1, 1989 at the rate of 11 percent per annum or \$6.03 per diem until paid;

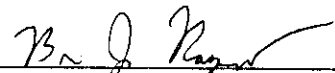
B. In the principal amount of \$50,000.00 plus accrued interest thereon from November 1, 1987 through December 31, 1988 in the amount of \$6,434.89 and interest accruing on the principal amount from January 1, 1989 at the rate of 11 percent per annum or \$15.07 per diem until paid;

C. Attorney fees in the amount of \$1,500.00;  
and the costs of this action, all for let execution issue.

  
\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
JACK L. BROWN, OBA #10742  
Attorney for Plaintiff, Commerce  
Bank of Kansas City, N.A.

  
\_\_\_\_\_  
BRIAN J. RAYMENT, OBA #7441  
Attorney for Defendant James D.  
Nelson



FILED

JAN 17 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RONALD L. HUNTLEY,

Plaintiff,

v.

LENNOX INDUSTRIES, INC.,

Defendant.


Civil Action No. 88-C-82 E

JUDGMENT

This matter came before the Court upon Defendant's Motion for Summary Judgment. That Motion being duly considered

IT IS ORDERED, ADJUDGED, AND DECREED that Defendant's Motion be granted, that Plaintiff take nothing, that this action be dismissed with prejudice, and that Defendant recover of Plaintiff its costs of action.

IT IS SO ORDERED this 13<sup>th</sup> day of January,  
1989.

  
James O. Ellison  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 17 1989

EMMETT L. MOON,

Plaintiff,

vs.

GUARANTEE INSURANCE CO.,

Defendant.


Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 85-C-200-E


ORDER

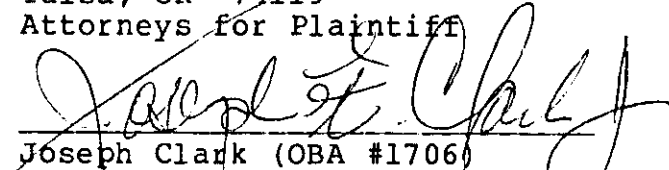
NOW on this 13<sup>th</sup> day of Jan, 1989, this matter comes on before the undersigned Judge for hearing of the Joint Application for Dismissal With Prejudice previously filed herein. The Court finds that said application should be and the same is hereby granted.

IT IS SO ORDERED.

  
UNITED STATES DISTRICT COURT  
JUDGE

APPROVED AS TO FORM AND CONTENT:

  
Thomas A. Layon (OBA #5303)  
LAYON, CRONIN & TRUSTER  
1850 South Boulder, Suite 200  
Tulsa, OK 74119  
Attorneys for Plaintiff

  
Joseph Clark (OBA #1706)  
WILLIAMS, CLARK, BAKER & EARL  
1605 South Denver  
Tulsa, OK 74119  
Attorneys for Defendant

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

**JAN 17 1989**

**Jack C. Silver, Clerk  
U.S. DISTRICT COURT**

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

LARRY PAUL CARROLL; COUNTY )  
TREASURER, Tulsa County, )  
Oklahoma; and BOARD OF COUNTY )  
COMMISSIONERS, Tulsa County, )  
Oklahoma, )

Defendants. )

CIVIL ACTION NO. 88-C-1011-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 13<sup>th</sup> day  
of January, 1989. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by Doris L. Fransein, Assistant District  
Attorney, Tulsa County, Oklahoma; and the Defendant, Larry Paul  
Carroll, appears not, but makes default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Larry Paul Carroll, was  
served with Summons and Complaint on October 25, 1988; that  
Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged  
receipt of Summons and Complaint on August 24, 1988; and that  
Defendant, Board of County Commissioners, Tulsa County, Oklahoma,  
acknowledged receipt of Summons and Complaint on August 24,  
1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on September 7, 1988; and that the Defendant, Larry Paul Carroll, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

The East Thirty-five (35) feet of the West Seventy (70) feet of Lot Four (4), Block Two (2), in PLEASANT VIEW ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on September 6, 1985, the Defendant, Larry Paul Carroll, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, his mortgage note in the amount of \$29,500.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Larry Paul Carroll, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated September 6, 1985, covering the above-described property. Said mortgage was recorded on September 16, 1985, in Book 4892, Page 251, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Larry Paul Carroll, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Larry Paul Carroll, is indebted to the Plaintiff in the principal sum of \$29,211.84, plus interest at the rate of 11.5 percent per annum from December 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Larry Paul Carroll, in the principal sum of \$29,211.84, plus interest at the rate of 11.5 percent per annum from December 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.16 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Larry Paul Carroll, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:


In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

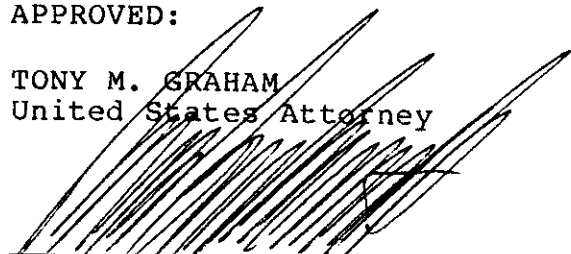
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

  
UNITED STATES DISTRICT JUDGE

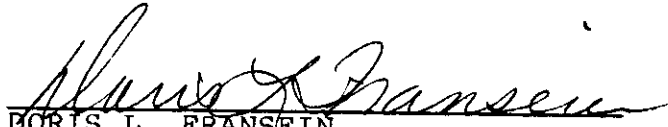
APPROVED:

TONY M. GRAHAM  
United States Attorney



---

PETER BERNHARDT  
Assistant United States Attorney



---

BORIS L. FRANSEIN  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

PB/css

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIFORD ENERGY COMPANY,  
an Oklahoma corporation,  
Plaintiff,

v.

TRANSWESTERN PIPELINE COMPANY,  
a Delaware corporation,


Case No. 88-C-1647E

NOTICE OF DISMISSAL OF ACTION

TO: Terence H. Thorn, President  
Transwestern Pipeline Company  
P.O. Box 1188  
Houston, Texas 77251-1188

Please take notice that the above-entitled action is hereby  
dismissed with prejudice.

Dated this 17th day of January, 1989.

  
Frederic Dorwart  
Holliman, Langholz, Runnels  
& Dorwart,  
A Professional Corporation  
Suite 700, Holarud Building  
Ten East Third Street  
Tulsa, Oklahoma 74103  
(918) 584-1471

Attorney for the Plaintiff  
Williford Energy Company

FILED

JAN 17 1989

JACK HARRIS, CLERK  
U.S. DISTRICT COURT



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

JOHN H. WILLIAMS, JR., and  
CAROL S. WILLIAMS,

Debtors.

ROBERT A. STOCKER,  
TRUSTEE,

Plaintiff,

vs.

KENSINGTON COMPANY LIMITED,  
PARTNERSHIP, formerly, The  
Kensington Company Ltd., an  
Oklahoma limited partnership;  
and JOHN H. WILLIAMS, SR.,

Defendants.

Case No. 86-00475-W  
(Chapter 11)

Adversary No. 87-0337-W

Appeal No. 88-C-1363-E

**FILED**

JAN 17 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER OF DISMISSAL

Upon the Stipulation of Dismissal, filed herein pursuant to Bankruptcy Rule 8001(c)(2) by Robert A. Stocker, the Appellee, and The Kensington Company Limited Partnership and John H. Williams, Sr. the Appellants, and the Court having found that the parties hereto have reached a settlement which resolves the issues in this consolidated appeal and have agreed that the appeal may be dismissed with prejudice, each party to bear its own costs.

IT IS THEREFORE ORDERED that the above-styled consolidated appeal be, and it is hereby, dismissed with prejudice, and that each party shall bear its own costs

incurred herein.

IT IS SO ORDERED this 13<sup>th</sup> day of January 1989.

Thomas E. English  
United States District Judge

APPROVED AS TO FORM  
AND CONTENT:

Thomas E. English  
Thomas E. English  
Paula A. Jackson  
ENGLISH, JONES & FAULKNER  
1700 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-1564  
ATTORNEYS FOR APPELLEE,  
ROBERT A. STOCKER, TRUSTEE

Richard W. Gable  
Richard W. Gable  
GABLE & GOTWALS  
2000 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74119  
(918) 582-9201  
ATTORNEYS FOR APPELLANT,  
KENSINGTON COMPANY LIMITED PARTNERSHIP

FILED

JAN 17 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BRANDY CHASE CONDOMINIUMS  
ASSOCIATION, INC., et al.,

Plaintiffs,

vs.

RICHARD HORN, et al.,

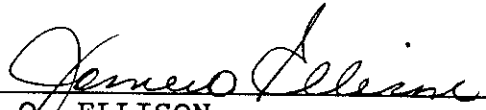
Defendants.

No. 87-C-146-E

NOTICE

Pursuant to Rule 35 of the Local Court Rules of the Northern District of Oklahoma, notice is hereby given that this case shall be dismissed as to Third Party Defendants Richard Horn and Circle H. Electric, Inc. for lack of prosecution if no action is taken within thirty (30) days of the date of this Notice.

DATED this 13<sup>th</sup> day of January, 1989.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JAN 17 1990

CLERK  
DISTRICT COURT

GENERAL ELECTRIC COMPANY,

Plaintiff,

vs.

W. M. SMITH ELECTRIC COMPANY OF  
OKLAHOMA, INC., an Oklahoma  
Corporation, W. M. SMITH ELECTRIC  
COMPANY, INC., a Texas Corporation,  
POWER ELECTRIC COMPANY, INC., a  
Mississippi Corporation, EVANS  
ELECTRIC, INC., an Oklahoma  
Corporation, MID AMERICA'S PROCESSING  
SERVICES, INC., an Oklahoma  
Corporation, RELIANCE ELECTRIC COMPANY,  
a Delaware Corporation, CARL PONS  
ELECTRIC MOTOR SERVICE, INC., a Texas  
Corporation, ALLEN M. GRAYSON, JR.,  
ALLEN M. GRAYSON, III, LYNN WHITEFIELD  
TERRY RHINE, and Brian Jacobs,

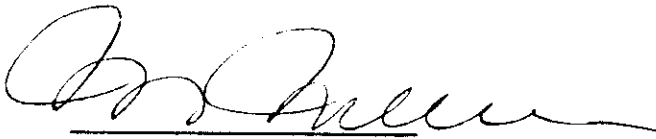
Defendants.

No. 83-C-1069-E

**JOINT STIPULATION OF DISMISSAL WITH PREJUDICE**

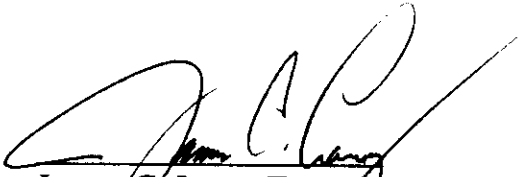
The plaintiff, General Electric Company ("General Electric"), and the defendants, W.M. Smith Electric Company of Oklahoma, Inc., W.M. Smith Electric Company, Inc., Power Electric Company, Inc., Mid America's Processing Services, Inc., Carl Pons Electric Motor Service, Inc., Allen M. Grayson, Jr., Allen M. Grayson, III, Lynn Whitefield, and Terry Rhine, pursuant to FED. R. CIV. P. 41(a)(1)(ii) stipulate that all claims for relief asserted by plaintiff and defendants in the captioned matter be dismissed, with prejudice

to refiling, with all parties to bear their own respective costs and attorneys fees.



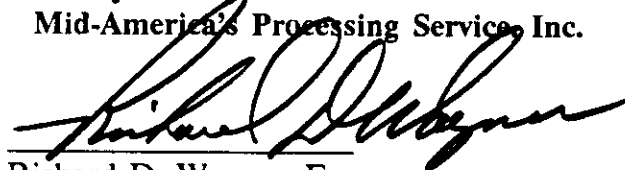
J. Warren Jackman, Esq.  
PRAY, WALKER, JACKMAN,  
WILLIAMSON & MARLAR  
Oneok Plaza, 9th Floor  
Tulsa, OK 74103

**Attorneys for W.M. Smith Electric  
Company of Oklahoma, Inc.**



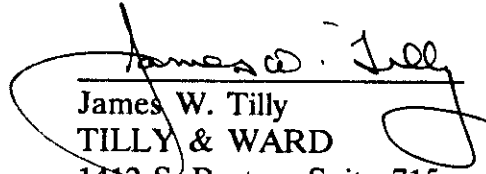
James C. Lang, Esq.  
SNEED, LANG, ADAMS, HAMILTON,  
DOWNIE & BARNETT  
114 E. 8th, 6th Floor  
Tulsa, OK 74119

**Attorneys for Lynn Whitefield and  
Mid-America's Processing Service, Inc.**



Richard D. Wagner, Esq.  
KNIGHT, WAGNER, STUART,  
WILKERSON & LIEBER  
P. O. Box 1560  
Tulsa, OK 74101-1560

**Attorneys for Allen M. Grayson, III  
and Carl Pons Electric Motor Service, Inc.**



James W. Tilly  
TILLY & WARD  
1412 S. Boston, Suite 715  
Tulsa, Oklahoma 74119

and

Eric C. Cohen  
WELSH & KATZ, LTD.  
135 S. LaSalle St.  
Chicago, Ill. 60603

**Attorneys for General Electric Company**



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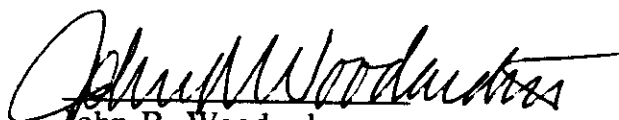
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**Attorneys for W.M. Smith Electric  
Company, Inc.**

FILED

JAN 17 1989

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

MOHAMMED SAYANI, SEEMA SAYANI, individually)  
and as the natural parents and next  
friend of FAHAD SAYANI, a minor,

Plaintiffs,

v.

No. 88-C-265-E

VICKIE LYNN CROWLEY,

Defendant.

JOURNAL ENTRY OF JUDGMENT

NOW ON this 3 day of January, 1988, the above-captioned case comes on for hearing before me, the undersigned Judge of the District Court in and for the Northern District, State of Oklahoma. The Plaintiffs appear by and through their attorney of record, Randall A. Gill, and the Defendant appears by and through her attorney of record, Daniel E. Holeman, and both parties announcing ready for trial, and the jury being waived, evidence was introduced, and the Court being fully advised in the premises, finds that the Plaintiffs have sustained the allegations of their Petition and are entitled to judgment accordingly.

The Court further finds that Plaintiffs have knowingly, willingly, and voluntarily caused this action to be prosecuted and have been advised of the consequences thereof. The Court therefore finds that the Plaintiffs receive judgment in their favor and against Defendant, Vickie Crowley, in the amount of Eight Thousand and 00/100 (\$8,000.00) Dollars. This amount is to be apportioned as follows: Five Hundred and 00/100 (\$500.00) of the settlement is to be apportioned to Fahad Sayani. The Court, in examining the file, finds that the minor Fahad Sayani, has sustained no permanent injury and that Five Hundred and 00/100 (\$500.00) is a fair and equitable benefit in his behalf. The Court further finds that because the amount awarded to the minor is less than One Thousand and 00/100 (\$1,000.00), there is no need for an independent trust account pursuant to 12 O.S.

Supp. § 83. The remaining Seven Thousand Five Hundred and 00/100 (\$7,500.00) shall be apportioned between Mohammed and Seema Sayani.


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiffs, on their cause of action contained in the Petition herein, have and recover from the Defendant, Vickie Crowley, the total of Eight Thousand and 00/100 (\$ 8,000.00) Dollars.

The Court further finds that said Eight Thousand and 00/100 (\$ 8,000.00) Dollars includes costs and expenses including all liens, medical bills and attorney's fees.

W. J. RUSSELL

Judge of the District Court In and For  
The Northern District of Oklahoma

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
Randall A. Gill  
Attorney for Plaintiffs

\_\_\_\_\_  
Daniel E. Holeman  
Attorney for Defendant



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

LEROY WAYNE JACKSON, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 JAMES L. SAFFLE and The )  
 Attorney General of the )  
 State of Oklahoma, )  
 )  
 Respondents. )

88-C-335-E

**FILED**

JAN 17 1989 *CP*

Jack C. Silver, Clerk  
U.S. DISTRICT COURT


ORDER

The court has for consideration the Report and Recommendation of the Magistrate, erroneously titled "Order", filed November 18, 1988, in which the Magistrate recommended that respondents' Motion to Dismiss be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that respondents' Motion to Dismiss petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is granted.

Dated this 15<sup>th</sup> day of January, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DONNA RENFRO AND BILLY MARTIN  
RENFRO,

Plaintiffs,

v.

MANFRED PFEIFFER,

Defendant.

JAN 17 1989

John C. Soper, Clerk

86-C-950-C

ORDER

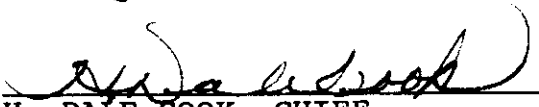
The Court has for consideration the Report and Recommendation of the Magistrate filed December 23, 1988 in which the Magistrate recommended that Plaintiff's Motion to Vacate Judgment Dismissing Action be denied.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that Plaintiff's Motion to Vacate Judgment Dismissing Action is denied.

Dated this 17<sup>th</sup> day of January, 1989.

  
H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES POSTAL SERVICE, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PAUL GRAYSON MERSCH, )  
 )  
Defendant. ) Civil Action No. 88-C-1526-C

ADMINISTRATIVE CLOSING ORDER

NOW on this 11th day of January, 1989, this matter came on for a status conference. Plaintiff United States Postal Service appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and Defendant Paul Grayson Mersch appeared by his attorney Cecil G. Drummond.

Counsel for Plaintiff announced that Plaintiff was seeking no relief beyond the preliminary injunction issued on November 23, 1988 and that this case could therefore be administratively closed pending conclusion of the statutory administrative proceedings. Counsel for Defendant had no objection to an administrative closing.

Good cause being shown, it is therefore ordered that this case be administratively closed pending the conclusion of the statutory administrative proceedings pending before Plaintiff against Defendant and National Bancard Corporation. It is further ordered that within thirty (30) days of the conclusion of

such administrative proceedings, one or both of the parties herein shall move to reopen this case either for the purpose of further proceedings or for the purpose of dismissal.

IT IS SO ORDERED this 17<sup>th</sup> day of Jan., 1989.

S/ THOMAS R. BRETT

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UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 17 1989

KERMIT DEEDS

Plaintiff,

v.

ELGIN VETERINARY HOSPITAL, et al

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

88-C-667-E

ORDER

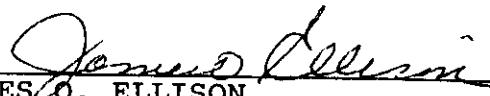
The Court has for consideration the Report and Recommendation of the Magistrate filed November 30, 1988 in which the Magistrate recommended that Defendant's Motion to Dismiss be granted.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that Defendant's Motion to Dismiss is granted.

Dated this 13<sup>th</sup> day of January, 1988.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 1 1989

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

MOTEL HOLDING CO., INC., d/b/a  
MOTEL 6,

Defendant.

CIVIL ACTION NO.

87-C-816-C

CONSENT DECREE

This action was initiated on December 10, 1987, by the Plaintiff, the Equal Employment Opportunity Commission (hereinafter the "EEOC"), an agency of the United States Government, alleging that the above named Defendant violated Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. Section 2000e, et seq. (hereinafter "Title VII"), by unlawfully terminating its employee, Annie B. Nelson, because of her sex and religious beliefs. The EEOC and the Defendant desire to settle this action and, therefore, do hereby stipulate and consent to the entry of this Decree as final and binding between the parties signatory hereto and their grantees, heirs, successors, purchasers and/or assigns. This Decree resolves all matters related to the Complaint filed herein. The parties have agreed that this Decree may be entered without Findings of Fact and Conclusions of Law having been made and entered by the Court.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, the EEOC and the Defendant agree as follows and IT IS THEREFORE ORDERED, AND DECREED that:

1. This Decree resolves all issues raised in EEOC Charge No. 083-84-0185 and the EEOC's Complaint in this case. The EEOC waives further litigation based on the issues raised in the above-referenced Charge and/or Complaint and facts surrounding the Charge and the Complaint. The EEOC does not waive the processing or litigation of any charge of discrimination, including any Commissioner's charge, other than Charge. No. 083-84-0185.

2. The parties agree that this Court has jurisdiction of the subject matter of this action and of the parties and that venue is proper.

3. By entering into this Decree, neither the EEOC nor the Defendant waive any contentions regarding the allegations on the merits of this cause of action. The Defendant does not admit that there has been a violation of Title VII of the 1964 Civil Rights Act as alleged in the Complaint or the underlying Charge. Neither party will challenge the validity of this Decree nor contest the jurisdiction of the federal district court to enforce this Decree and its terms or the right of either party to bring an enforcement proceeding upon breach of any of the terms of this Decree by the other party. Breach of any term of this Decree shall be deemed to be a substantive breach of this Decree.

4. The Defendant shall maintain and conduct all hiring practices, all compensation and promotion practices, all discipline practices, all discharge practices and all other terms, conditions and/or privileges of employment in a manner which does not discriminate on the basis of sex and/or religious beliefs in violation of Title VII of the Civil Rights Act of 1964.

5. The Defendant shall not discriminate and/or retaliate against any person because that person has filed a charge, given testimony or assistance in connection with the investigation of a charge, participated in preparation of a hearing, or filed a remedial claim with the Equal Employment Opportunity Commission.

6. The term "Defendant" as used herein shall refer to Motel 6 Operating L.P., successor in interest to Motel Holding Co., Inc., and shall include the Defendant, its grantees, heirs, successors, purchasers, and/or assigns, all of whom shall be bound by the terms of this Consent Decree.

7. Within fifteen (15) days of the Court's entry of this Decree, the Defendant shall extend an offer of reinstatement to Annie B. Nelson to her former position or to a substantially equivalent position at the Motel 6 facility, owned and operated by the Defendant in the Fort Worth, Texas, metropolitan area, of her choice. The offer shall identify all Motel 6 facilities in the Fort Worth, Texas, metropolitan area and the position(s) for which Ms. Nelson will be eligible. The offer shall plainly indicate that Ms. Nelson shall have the right to choose the Motel



6 facility at which she will be reinstated and that Ms. Nelson will be allowed reasonable time off to attend her Sunday religious services. Upon acceptance, the Defendant shall restore Annie Nelson's seniority, and all employee benefits, including any retirement benefits and retirement contributions, and all other accrued employment rights and privileges as though she had never been terminated from the motel at which she was employed by the Defendant, and subject to the same terms, conditions, and benefits of employment as other similarly situated employees. Annie B. Nelson's salary shall consist of her salary at the time of discharge, plus all merit raises and cost of living adjustments for the years 1983 through 1988 to which she otherwise would have been entitled absent discharge by the Defendant.

8. Notification to Annie B. Nelson of this offer of employment shall be hand delivered, to Ms. Nelson at the offices of the EEOC. Such letter shall indicate that Annie B. Nelson shall have at least thirty (30) days after receipt to notify the Defendant of her decision either to accept or reject the offer of employment and that if she chooses to accept the offer, she shall have fifteen (15) days after service of the notice of acceptance upon the Defendant to report to work. The Defendant shall implement all administrative measures necessary to arrange for Ms. Nelson's reinstatement to the Motel 6 facility of her choice in the Fort Worth metropolitan area, should Ms. Nelson accept the Defendant's offer of reinstatement. The letter shall further notify Annie B. Nelson of all terms of the offer of employment

including those set forth in Paragraph 7, above, and assure Annie B. Nelson that she will be allowed time off to attend her Sunday religious services and will not be penalized in future consideration for promotion, transfer, or any other terms or conditions of employment by the Defendant. The Defendant shall also notify Ms. Nelson by Certified Mail, Return Receipt Requested, of the date that the fifteen (15) day period in which she is to report to work will expire. Thereafter, Ms. Nelson will notify the manager of the Motel 6 facility at which she chooses to be reinstated of the date that she will report to work, but in no event later than fifteen (15) days from the date the Defendant receives notice of her acceptance. If Ms. Nelson accepts the Defendant's offer of reinstatement, but does not report to work within fifteen (15) days of the date that the Defendant received notice of her acceptance, her right to reinstatement will be deemed waived. The Defendant shall send or deliver a copy of all correspondence concerning the offer of employment between it and Annie B. Nelson to the Regional Attorney, Dallas District Office, EEOC, 8303 Elmbrook Drive, Dallas, Texas 75247, at the time of mailing such correspondence to Ms. Nelson. If Annie B. Nelson chooses to accept the offer, she shall serve notice upon Defendant by Certified Mail, Return Receipt Requested, to Motel 6, 14651 Dallas Parkway, Suite 500, Dallas, Texas 75240, Attn: Robert B. Soderborg, Jr., or by telephoning Mr. Soderborg at (214) 702-6961, specifying the motel at which she will work.

9. In settlement of this dispute, the Defendant shall pay a remedial award of backpay in the amount of \$18,000 to Annie B. Nelson. This amount comprises the full amount of the pay and interest Annie B. Nelson would have earned absent discharge by the Defendant, from the date of her discharge in May of 1983 to the present, less interim earnings. Required deductions from this amount shall be made by the Defendant for Federal Withholding and Social Security taxes and other amounts required by law. The Defendant shall also pay the employer's contribution of the required Social Security taxes (FICA) as required by law; this amount is not to be deducted from Ms. Nelson's backpay check.

10. The Defendant shall further provide an affidavit from an authorized company official indicating that Ms. Nelson would not have been entitled to any benefits, other than health insurance, as a result of her employment with Motel 6 beginning in December of 1981 and ending in May of 1983, within fifteen (15) days of the Court's entry of this Consent Decree to EEOC, Dallas District Office, 8303 Elmbrook Drive, Dallas, Texas 75247, Attn: William C. Isbell.

11. In settlement of this dispute, the Defendant and Ms. Annie B. Nelson shall also execute the "Indemnity Agreement" attached hereto as attachment "A" and the "Confidentiality Agreement" attached hereto as attachment "B" within fifteen (15) days of the Court's entry of the Decree.

12. The Defendant shall deliver to EEOC, 8303 Elmbrook

Drive, Dallas, Texas 75247, to the attention of William C. Isbell, Trial Attorney, within fifteen (15) days of the Court's entry of this Consent Decree, a check for Annie B. Nelson, for backpay in the amount indicated in paragraph 9 less required deductions. The Defendant shall make legal deductions for Federal Withholding income taxes and employee portions of Social Security taxes from the backpay check. The Defendant shall include with the check itemized statements indicating specific amounts paid and deductions made. All W-2 forms shall be provided as required by law.

13. The check referred to above shall be made payable to "Annie B. Nelson." The check shall be promptly delivered by EEOC to Annie B. Nelson. The EEOC will secure the release and waiver prepared by the EEOC and executed by Annie B. Nelson attached hereto as Attachment "C". After the Defendant's backpay check has been fully paid to the designated payee(s) by the payor bank or financial institution, the EEOC shall promptly upon return of the executed release deliver the same to the Defendant in care of Mr. Lonnie Hardin, Attorney for Defendant, Knight, Wagner, Stuart, Wilkerson & Lieber, P. O. Box 1560, Tulsa, Oklahoma 74101-1560.

14. Within fifteen (15) days of the entry of this Consent Decree, the Defendant shall expunge from all of its records and files, other than the litigation file pertaining to this matter kept in the Motel 6 Legal Department, any notations, remarks, memoranda or other indications evidencing that the service

performed by Annie B. Nelson was other than or anything less than satisfactory, and shall eliminate from Annie B. Nelson's personnel records all documents and entries relating to the facts and circumstances which led to her discharge on or about May 15, 1983. The Defendant shall also provide to Annie B. Nelson within thirty (30) days of the Court's entry of this Consent Decree one of the letters of reference reprinted on the Defendant's letterhead, attached hereto as Attachments "D" and "E", with a copy sent to the Plaintiff. The determination of which letter of reference will be provided is conditional upon Ms. Nelson's acceptance or non-acceptance of the Defendant's offer of reinstatement. In the event that Ms. Nelson accepts the Defendant's offer of reinstatement, the Defendant shall provide an executed original and copy of Attachment "D" as specified above. In the event that Ms. Nelson declines the Defendant's offer of reinstatement, the Defendant shall provide an executed original and copy of Attachment "E" as specified above. The Defendant further agrees that in the event that inquiries are received from prospective employers relative to Annie B. Nelson, it will provide her date of hire, date of departure, job title, rate of pay, and the reference letter. The Defendant agrees not to divulge any of the facts or circumstances related to the termination of employment, the charges of discrimination filed by Ms. Nelson, and/or this litigation to such prospective employers. No officer, agent and/or employee of the Defendant shall have access to the litigation file pertaining to this matter kept in

the Motel 6 Legal Department and/or any of the records expunged from Ms. Nelson's personnel file, except Motel 6's legal staff without first providing thirty (30) day written notice to EEOC, Dallas District Office, 8303 Elmbrook Drive, Dallas, Texas 75247, Attn: William C. Isbell, specifying the person to whom access is being proposed, the date of the proposed access, and the reasons therefore. In no event shall any information from said litigation file and/or from the documents expunged from Ms. Nelson's personnel file, and/or any information concerning the facts of circumstances concerning Ms. Nelson's discharge, the investigation of her charge, or any matter pertaining to this litigation be released, except as required to effect the purpose of this Consent Decree, to any person including current employees, officers and/or agents of the Defendant, without prior written approval of the Regional Attorney of the Dallas District Office of the EEOC. Release of such information to any person without prior written approval of said Regional Attorney shall render the "Confidentiality Agreement" attached hereto as Attachment "B" null and void and unenforceable.

15. If Annie B. Nelson accepts the offer of employment as specified herein, for a three (3) year period commencing on the date this Consent Decree is approved by the District Court, the Defendant shall notify the Regional Attorney for the Dallas District Office of the Commission of any proposed personnel actions that adversely affect Annie B. Nelson. Such notice shall be made prior to the contemplated effective date of any personnel

action and unless there are situations which require immediate action and shall afford the Regional Attorney fifteen (15) days to respond prior to the effective date of the proposed action to determine whether such adverse action violates this Consent Decree. However, the Defendant's obligation pursuant to this paragraph shall continue only during the course of Annie B. Nelson's employment with the Defendant, if her employment ceases before said three year period.

16. The Defendant agrees that it will hereafter require all of its management officials involved in making personnel decisions to undergo training, as specified in this paragraph, on the legal requirements placed upon the Defendant and its officers, managers, agents and employees by Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. Section 2000e et. seq., the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 621 et. seq., the Equal Pay Act of 1963, as amended, 29 U.S.C. Section 706(d), and the EEOC's regulations issued pursuant to all of the Acts specified above. All management officials involved in making personnel decisions who are employed by the Defendant at the time of the entry of this Consent Decree shall be issued training materials on said Acts and regulations by the Defendant and/or shall be instructed by the Defendant on the legal requirements and guidelines of said Acts and regulations in meetings with area managers or other regularly conducted management meetings within six (6) months of the date this Consent was entered by the Court. All management

officials who are and/or will be involved in making personnel decisions who are hired by the Defendant after the date of this Decree was entered by the Court shall be trained on the legal requirements and guidelines of said Acts and regulations in training sessions conducted by the Defendant on at least an annual basis, the first of which shall be conducted no later than six (6) months from the date this Consent Decree was entered by the Court. The Defendant shall prepare training materials which explain the guidelines and the legal requirements imposed upon the Defendant, its officers, managers, agents, and employees, by said Acts and regulations and shall distribute these materials to all its current or future management officials in a manner consistent with this Paragraph. The Defendant shall submit reports to the Regional Attorney of the Dallas District Office, 8303 Elmbrook Drive, Dallas, Texas 75247, on the first, second, and third anniversary of the Court's entry of this Consent Decree specifying the scope, nature, method and manner of the training provided to its management officials, the dates of the training, the names of all management officials who received the training, and shall submit copies of the training materials prepared pursuant to this Paragraph, and any changes or amendments thereto.

17. The Defendant shall sign and conspicuously post in all places where employee notices are posted at all motel facilities in the City of Tulsa, Oklahoma and at the motel facility where Annie B. Nelson is reinstated, if she accepts the Defendant's



offer of reinstatement, and for a period of not less than ninety (90) days, the Notice labeled "Attachment F" to this Decree prepared on EEOC letterhead. The notice shall be posted within fifteen (15) days of the entry of this Decree.

18. If it has not yet done so, the Defendant shall immediately comply with the provisions of the Title VII of the Civil Rights Act of 1964, in that it shall post and keep posted in conspicuous places upon its premises at all motel facilities the approved EEOC poster advising employees of their Title VII rights. The Defendant shall also file its annual EEO-1 report for all its facilities.

19. If Annie B. Nelson accepts the offer of employment as specified herein, the Defendant shall provide to the EEOC, within sixty (60) days from the Court's entry of this Decree, a report describing the specific locations of all posters and notices posted at the Motel 6 facility at which Annie B. Nelson is to be reinstated. Copies of the most recently filed EEO-1 report shall be sent to the Regional Attorney of the Dallas District Office.

20. The Defendant shall provide to EEOC a report within thirty (30) days of the Court's entry of this Decree describing the expungement taken pursuant to paragraph 14, including a description of specific items expunged from the personnel records of Annie B. Nelson, a copy of the reference letter referred to in Paragraph 14, above, a copy of the expunged records, and a copy of the personnel records and/or files after expungement, all appropriately labeled and identified.

21. The Defendant shall provide to the Commission on the request of Annie B. Nelson or the Commission, the opportunity and right to review compliance with this Consent Decree at any time during the period of three (3) years from the date of the Court's entry of this Decree, upon receiving reasonable notice of such request. If the Defendant and/or its successors, heirs, and/or assigns terminate Ms. Nelson's employment prior to the expiration of said three year period in a manner which does not violate the terms of this Consent Decree, the Commission will only have the right to review compliance with those portions of this Consent Decree which are not solely related to her reinstatement as a Motel 6 facility. As part of such review, the Commission may require from the Defendant written reports concerning compliance, inspect premises, obtain testimony from and interview employees and other witnesses, and examine and copy any documents in the possession of the Defendant to the extent not otherwise privileged. The Defendant shall be provided a reasonable opportunity to be present at such review and shall at all times retain the right to object to compliance with the provisions of this paragraph upon the grounds of privilege, if the grounds and reasons upon which the claim of privilege are clearly specified.

22. Within fifteen (15) days of the date of the Court's entry of this Decree, the Defendant shall adopt and implement the personnel policies set forth in full in "Attachment G" attached hereto. The Defendant shall include the personnel policies in full in any and all policy and procedure manuals, and employee

handbooks, generated by the Defendant for internal use and/or distribution to its employees following the date of the Court's entry of this Decree. As part of this provision, the Defendant shall provide to the Commission copies of the relevant excerpts of its revised policy and procedure manual and employee handbook reflecting the adoption and implementation of the personnel policies set forth in "Attachment G" attached hereto prior to the expiration of the term of this Consent Decree. The relevant excerpts of the revised policy and procedure manual and employee handbook shall be mailed to the EEOC, 8303 Elmbrook Drive, Dallas, Texas 75247, in care of William C. Isbell, Trial Attorney when they have been printed.

23. Nothing in this Decree shall be construed to preclude the EEOC and/or any aggrieved individual from moving the Court to enforce this Decree in the event that the Defendant fails to perform the promises and representations, or any of them, contained herein.

24. All parties agree that settlement of the instant case is intended to be without prejudice to any other case which the Defendant or Annie B. Nelson may have pending before the U.S. Equal Employment Opportunity Commission or before any court of competent jurisdiction.

25. This Consent Decree shall be binding upon the EEOC, Annie B. Nelson, and the Defendant, its successors, heirs, purchasers and/or assigns, as to the issues resolved herein. The Defendant shall promptly notify the principals of any entity that

purchases the Defendant, or the facility at which Ms. Nelson is reinstated, at any time during the duration of this Decree, of the terms of this Decree, and provide them with a copy of this Decree.

26. The EEOC and the Defendant agree to pay their own attorney's fees. The Defendant shall pay the EEOC's costs herein by check in the amount of \$1,317.85 made payable to the "Equal Employment Opportunity Commission" delivered to the Regional Attorney of the EEOC, 8303 Elmbrook Drive, Dallas, Texas 75247, within fifteen (15) days of the Court's entry of this Consent Decree.

SO ORDERED this 7<sup>th</sup> day of January, 1989.

(Signed) H. Dale Cook

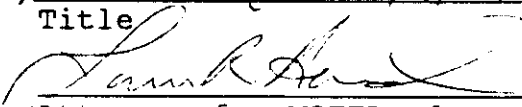
\_\_\_\_\_  
DALE COOK  
U. S. DISTRICT COURT JUDGE

For MOTEL 6 OPERATING L.P.,  
Successor to the Defendant  
MOTEL HOLDING CO., INC.,  
d/b/a MOTEL 6,

By: Motel 6 G.P., Inc. -  
Managing General Partner

  
Corporate Officer Name

ASSOC. GENERAL COUNSEL & ASSY. SECRETARY  
Title

  
Attorney for MOTEL 6  
OPERATING L.P.

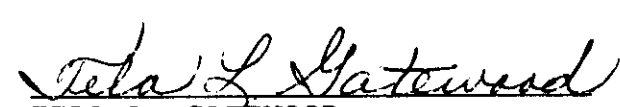
LONNIE HARDIN, Esq.  
Knight, Wagner, Stuart,  
Wilkerson & Lieber  
P.O. Box 1560  
Tulsa, OK 74101-1560  
(918) 584-6457

For the EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION:

CHARLES A. SHANOR  
General Counsel

PHILIP B. SKLOVER  
Associate General Counsel  
Trial Services

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
2401 E Street, N.W.  
Washington, D.C. 20507

  
TELA L. GATEWOOD  
Acting Regional Attorney

  
DALE H. JURGENS  
Supervisory Trial Attorney

  
WILLIAM C. ISBELL  
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Dallas District Office  
8303 Elmbrook Drive  
Dallas, Texas 75247  
(214) 767-7961  
(FTS) 729-7961

## ATTACHMENT "A"

### INDEMNITY AGREEMENT

In full settlement of all claims of Annie B. Nelson (hereinafter "Ms. Nelson") arising from her discharge from employment by Motel 6, Inc., d/b/a Motel 6 (hereinafter "Motel 6") on or about May 15, 1983, and in consideration of the mutual promises of each party hereto, the sufficiency of which is hereby acknowledged, Ms. Nelson and Motel 6 agree as follows:

1. This agreement shall at all times be construed consistently with the terms and provisions of the Consent Decree entered in the case styled Equal Employment Opportunity Commission, Plaintiff, v. Motel Holding Co., Inc., d/b/a Motel 6, Defendant, Civil Action No. 87-C-816-C, (United States District Court for the Northern District of Oklahoma), on the \_\_\_\_ day of \_\_\_\_\_, 1988. Nothing in this agreement shall supercede or nullify any of the terms and provisions of said Consent Decree.

2. Motel 6 hereby agrees to indemnify Ms. Nelson in the full amount of any expense resulting from any attempt by the United States Government, and/or any officer, employee, agency, and/or agent thereof, and/or the State of Oklahoma, and/or any officer, employee, agency, and/or agent thereof, and/or the State of Texas, and/or any officer, employee, agency, and/or agent thereof, to recover any sum paid to, or on behalf of, Ms. Nelson for medical expenses and/or costs resulting from her pregnancy and/or pregnancy related medical treatment for the birth of her child, Shannon Latoya Nelson, born December 10, 1983, and/or her

*Ph*  
hernia A.N.

~~gall bladder~~ operation in approximately December of 1985, which were paid by the United States Government and/or the State of Oklahoma and/or the State of Texas to, or on behalf of, Ms. Nelson pursuant to the provisions of Title XIX of the Social Security Act, 42 U.S.C. Section 1396 et. seq., including, but not limited to, the full amount of all medical expenses and costs paid to, or on behalf of, Ms. Nelson by the United States Government, interest, attorneys fees, and court costs.

3. Motel 6's obligation to indemnify Ms. Nelson pursuant to the provisions of Paragraph 2 of this agreement shall expire at midnight four years to the day from the date the Consent Decree referred to above was entered by this Court.

<sup>6</sup>  
For MOTEL OPERATING L.P.,  
Successor to MOTEL  
HOLDING CO., INC., d/b/a  
MOTEL 6  
By: Motel 6 G.P., Inc.-  
Managing General Partner

*[Signature]*  
NAME

*Assoc. General Counsel / Asst. Secretary*  
TITLE

*Annie Nelson*  
MS. ANNIE B. NELSON

Entered into and executed this 06 day of January,  
1989.

Subscribed and sworn to before me this 06 day of January,  
1989.

*[Signature]*  
NOTARY PUBLIC

My Commission expires:

04/14/92

ATTACHMENT "B"

CONFIDENTIALITY AGREEMENT

In full settlement of all claims of Annie B. Nelson (hereinafter "Ms. Nelson") arising from her discharge from employment by Motel 6, Inc., d/b/a Motel 6 (hereinafter "Motel 6") on or about May 15, 1983, and in consideration of the mutual promises of each party hereto, the sufficiency of which is hereby acknowledged, Ms. Nelson and Motel 6 agree as follows:

1. This agreement shall at all times be construed consistently with the terms and provisions of the Consent Decree entered in the case styled Equal Employment Opportunity Commission, Plaintiff, v. Motel Holding Co., Inc., d/b/a Motel 6, Defendant, Civil Action No. 87-C-816-C (United States District Court for the Northern District of Oklahoma), on the \_\_\_\_ day of \_\_\_\_\_, 1988. Nothing in this agreement shall supercede or nullify any of the terms and provisions of said Consent Decree.

2. Ms. Nelson hereby agrees not to knowingly release any information concerning the settlement of the above-referenced action and/or any of the terms and/or provisions of said Consent Decree to any current or former employee of Motel 6 Operating L.P., Inc., d/b/a Motel 6, and/or to any newspaper, television station and/or network, radio stations and/or network, or any other media entity, and/or officer, agent, and/or employee thereof, without the prior approval of the Defendant or its



authorized representative of the United States  
Nelson from discussing this case and/or any of the facts of the case with any of her relatives or persons not specified in the Consent Decree.

3. Nothing in this Agreement shall preclude the United States, the Commission, and/or any other party thereof, from releasing information to the prosecution and/or settling any term or provision of this Agreement, partnership, and/or other agreement.

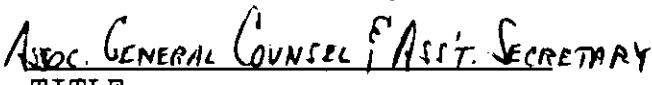
4. In the event of a violation set forth in Paragraph 2 of this Agreement, the right to place her on probationary employment with Motel 6 shall be limited to a two week suspension from employment with Motel 6 for the duration of this agreement. This shall be consistently with the provisions entered herewith and shall be subject to the Consent Decree.

5. Ms. Nelson's probationary period shall expire at midnight on the date of the Court's entry of judgment. If employed by Motel 6 at that time, her probationary period will expire upon her termination.

6  
For MOTEL OPERATING L.P.,  
Successor to MOTEL HOLDING CO., INC.,  
d/b/a MOTEL 6  
By: Motel 6 G.P., Inc.-  
Managing General Partner

  
NAME

  
MS. ANNIE B. NELSON

  
TITLE

Entered into and executed this 06 day of January,  
1989.

Subscribed to and sworn to before me this 06 day of  
January, 1989.

  
NOTARY PUBLIC

My Commission Expires:

04/14/92

ATTACHMENT "C"

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
	)	
PLAINTIFF,	)	
	)	CIVIL ACTION NO.
v.	)	
	)	87-C-816
MOTEL HOLDING CO., INC.,	)	
d/b/a MOTEL 6	)	
	)	
DEFENDANT.	)	
	)	

RELEASE

The undersigned, Annie B. Nelson, hereby certifies that she has received from Motel 6 Operating L.P., the amount of \$18,000 in gross backpay, less standard deductions for FICA tax and Federal Withholding tax, to which she is entitled as a result of the entry of the Consent Decree in the above-styled case.

The undersigned, Annie B. Nelson, hereby releases all claims against Motel Holding Co., Inc., its successors and assigns, arising solely under the Complaint in the above-styled action and the underlying charges filed with the Equal Employment Opportunity Commission pursuant to Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. Section 2000e et seq., from which this action arose.

PROVIDED, however, that nothing contained, said, or set forth in this Release shall in any way be construed

inconsistently with, or in such a way as to void or make unenforceable, any term or provision of the Consent Decree entered in the above-styled action, with the exception of those terms and provisions of the Consent Decree which relate solely to the payment of \$18,000 to the undersigned, Annie B. Nelson.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1989.

\_\_\_\_\_  
ANNIE B. NELSON

STATE OF TEXAS       )  
                          )  
COUNTY OF DALLAS    )

SUBSCRIBED TO AND SWORN before me this \_\_\_\_ day of \_\_\_\_\_,  
1989.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

My Commission Expires:  
\_\_\_\_\_

To Whom It May Concern:

Ms. Annie B. Nelson was employed at the Motel 6 facility on West I-44 in Tulsa, Oklahoma, as a maid from December 22, 1981 to May 15, 1983. According to the motel manager Ms. Nelson was a good employee and a hard worker.

Ms. Nelson is currently employed at the Motel 6 facility located at \_\_\_\_\_ in Fort Worth, Texas, as a Maid. She was hired to work at that Motel 6 facility on \_\_\_\_\_ day of \_\_\_\_\_. 1988.

Sincerely,

ATTACHMENT "D"

To Whom It May Concern:

Ms. Annie B. Nelson was employed at the Motel 6 facility on West I-44 in Tulsa, Oklahoma as a maid from December 22, 1981 to May 15, 1983. According to the motel manager of the facility at that time, Ms. Nelson was a good employee and a hard worker.

Sincerely,

ATTACHMENT "E"

ATTACHMENT "F"

NOTICE TO EMPLOYEES

Federal Law requires that there be no discrimination against any employee or former employee because of the person's sex, including pregnancy, religion, race, color, national origin, or age (age 40 and over) with respect to hiring, promotion, discharge, compensation, benefits, including severance benefits, or other terms, conditions or privileges of employment.

Federal Law prohibits retaliation and reprisal against employees because they exercise their rights to be free from such discrimination or to oppose such discrimination, including their rights to file a charge with the EEOC and to participate in EEOC investigations or proceedings.

WE WILL COMPLY in all respects with such Federal Laws including Title VII of the Civil Rights Act of 1964, as amended.

WE WILL NOT DISCRIMINATE against employees because of their sex, including pregnancy, or religion.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

Motel 6 Operating L.P.

By: MOTEL 6 G.P., Inc.- Managing  
General Partner

THIS IS AN OFFICIAL NOTICE

AND MUST NOT BE REMOVED OR DEFACED BY ANYONE

This Notice must remain posted for a period of ninety days and just not be altered, defaced, or covered by any other material. All questions concerning this notice or compliance with its provisions may be directed to Tela L. Gatewood, Esq., Regional Attorney (Acting), Dallas District Office, EEOC, 8303 Elmbrook Drive, Dallas, Texas 75247, (214) 767-7954.

ATTACHMENT "G"

PROPOSED REVISIONS TO MOTEL 6 OPERATING L.P.  
PERSONNEL POLICIES

1. Motel 6 believes that you are entitled to EQUAL EMPLOYMENT OPPORTUNITIES based on your qualifications and without regard to race, color, religion, sex, marital status, national origin, age or handicap as provided by law. This right to equal employment opportunity extends to recruitment, hiring, transfer, promotion, training, discipline, discharge, and all other conditions of employment. It is the right of every employee to work in an environment that is free from sexual harassment. It is also the policy of Motel 6 to classify discrimination on the basis of an individual's pregnancy or pregnancy-related condition as discrimination on the basis of sex. It is the policy of Motel 6 not to discriminate against any individual on the basis of such individual's religious beliefs. It is the policy of Motel 6 to make reasonable accommodations for the religious needs of its employees unless to make any reasonable accommodation would cause an undue hardship to Motel 6.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 15 1989  
JACK A. GIBSON, CLERK  
U.S. DISTRICT COURT

RALPH JOHN FEUERBORN, SR.,  
LAURA FEUERBORN and  
THE AMERICAN INSURANCE  
COMPANY, a New Jersey  
corporation,

Plaintiffs,

vs.

No. 87-C-159 C

STOOPS EXPRESS, INC.; and  
SAM GUY, an individual,

Defendants,

EVAN AQUILLA JONES IV,  
TRAILINER CORPORATION,  
and DARRELL WILSON,

Third-Party Defendants.

PACCAR INC., dba KENWORTH  
CORPORATION; HOLLAND HITCH,  
INC., OZARK KENWORTH, INC.,  
THE TRAVELERS INDEMNITY  
COMPANY; AND INTEGRAL  
INSURANCE COMPANY

Additional Defendants  
and Third-Party Defendants.

FILED  
JAN 17 1989  
JACK A. GIBSON, CLERK

ORDER DISMISSING CROSS-CLAIM OF PACCAR, INC.  
AS TO STOOPS EXPRESS, INC. AND SAM GUY

On Motion of the Defendants Sam Guy and Stoops Express, Inc. filed herein December 8, 1988, and the third party Defendant, Paccar, Inc. having filed no response or objection thereto, IT IS ORDERED that the Cross-Claim of Paccar, Inc. against Sam Guy and Stoops Express, Inc. is hereby dismissed by the Court with prejudice to the bringing of another action against Sam Guy and

Stoops Express, Inc. for the same claims for relief asserted herein.

All pending claims for relief against Sam Guy and Stoops Express, Inc. and all claims for relief asserted by them having now been dismissed, said Defendants are hereby discharged from any further attendance or participation in the proceedings in this action.

Entered this 17<sup>th</sup> day of January, 1989.

  
CHIEF DISTRICT JUDGE